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Director's Decisions for California

MCOA

(Mining Claims Occupancy Act)

1951-1970

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[illegible]

[illegible]

[illegible]

Adverse Claimant

[illegible]

[illegible]

[illegible]

IN REPLY REFER TO:

M:ANG
Los Angeles 052830
[illegible]
[illegible]

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

DECISION

DEC 5 - 1959
1951

D. Berger :
Applicant :
:
Goodwin J. Knight :
Adverse Claimant :

Mineral Application
Los Angeles 052830

Adverse Claim
Los Angeles 052898

Adverse Claim Dismissed
Application for Patent Rejected

On November 19, 1936, D. Berger, Post Office Box 216, Mojave, California, filed mineral application Los Angeles 052830, Survey No. 6161, for the New Bob Tail lode claim situated in the W½ sec. 6, T. 10 N., R. 12 W., S.B.M., California. Publication was had from December 24, 1936, to February 25, 1937. On February 17, 1937, Goodwin J. Knight, through his attorney George W. Wilson, 1806 Mills Tower, San Francisco, California, filed adverse claim Los Angeles 052898 against the application. On January 25, 1937, a suit was commenced in the court in support of the adverse claim but the final outcome of the suit has not been shown. Although a period of approximately 15 years has expired since the filing of the suit, no showing has been made by the adverse claimant or the mineral applicant as to the final outcome of the suit. The statute required the adverse claimant to prosecute the suit with diligence to a final judgment.

Section 2325, Revised Statutes, (30 U.S.C. 29) provides, among other things, that, "If no adverse claim shall have been filed with the Manager of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists." Section 2326, Revised Statutes, provides that where an adverse claim has been filed during the period of

publication of an application for mineral patent "all proceedings except the publication of notice and making and filing of the affidavit thereof shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived." It also provides that: "It shall be the duty of adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim."

It has been held that the question whether an adverse claimant has exercised reasonable diligence in prosecuting to final judgment a suit instituted under the provisions of Section 2326, Revised Statutes, is one for determination by the court in which the suit is pending and that this Department cannot determine it. Richmond Mining Company vs. Rose, 114 U.S., 576, 583; Last Chance Mining Company vs. Taylor Mining Company, 157, U.S., 683, 693; Lindley on Mines, Sections 741 and 759, and cases there cited.

We believe, however, that neither these decisions nor R. S. 2326 preclude the Department from taking appropriate action to clear its records and close its pending files where the proceedings have apparently been abandoned for years and where the mineral applicant has failed to respond to a request to show that court action was taken.

Accordingly, the mineral patent application listed in the caption hereof is rejected for lack of diligence in prosecuting the patent proceedings but without prejudice to the filing of an application for reinstatement of the patent application accompanied by the showing required by 43 CFR, 185.85 or 185.86. The adverse claim is dismissed and the case is closed.

This decision will become final 30 days from receipt of notice hereof. The right of appeal is allowed. Should no action be taken within the time allowed the application will be rejected and the case closed.

(Sgd) William Pincus

Assistant Director

Copy to : LO, Sacramento, California —2
RA, Reg. II, San Francisco

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SACRAMENTO, CAL.
MAR 2 10 09 AM 1964
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LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Sacramento 075709

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D. C. 20240

February 18, 1964

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DECISION

Russell C. Young : Public Law 87-851
:
:

Application Rejected

By decision, dated November 4, 1963, Russell C. Young was informed that his application to purchase, under the provisions of the Act of October 23, 1962 (76 Stat. 1127, 30 U.S.C. 701 et seq.), lands once embraced in an unpatented mining claim, was subject to rejection for the reason that, on the basis of evidence contained in the record, he was not a "qualified applicant." Young was allowed 30 days from receipt of the decision within which to furnish the following information, failing in which the application would be rejected:

(1) Evidence that the land was held as a mining claim for not less than the period July 23, 1955, through October 23, 1962.

(2) Evidence of transfer of title to the claim and improvements from the record owner Helen M. Besser.

The decision also permitted the right of appeal to the Director, and, under this provision, Young filed the subject appeal.

In his statement of reasons, appellant presents the following narrative which, he contends, is material to the issues presented in the appeal; Helen M. Besser located the claim on May 20, 1948 and filed proof of labor through 1953. She apparently gave John Leonard the right to live in the cabin located on the claim and permitted Leonard to work the claim from 1953 through 1959. Helen M. Besser disappeared in 1954 and abandoned the claim. Leonard continued to work the claim after Besser's disappearance and during weekends, vacations and holidays of the years 1956, 1957 and 1958, appellant worked the claim with Leonard.

Appellant contends that he paid the costs and otherwise financed Leonard to record the claim; that the claim has been continually mined since 1944; and that the claim has been occupied as a residence throughout the same period.

Even assuming the validity of the facts as presented by appellant, appellant's application must be rejected. Federal regulations implementing the Act of October 23, 1962, supra, notably 43 CFR 260.2(a), define the term "qualified applicant" as follows:

> "The term 'qualified applicant' means (1) a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962 or (2) the heirs or devisees of such a residential occupant-owner."

Since appellant's claim stems by assignment from Leonard's sister and only heir, Hazel Williamson, appellant would not be qualified for this reason alone. He was not a residential occupant-owner of improvements in an unpatented mining claim as of October 23, 1962. Moreover, he is not an heir or devisee of Leonard, who, it is contended, was the residential occupant-owner on the crucial date.

Although there appears still some question whether or not the land was held as a mining claim for not less than the period July 23, 1955 through July 23, 1962, we consider it unnecessary, in view of our determination that appellant was not a qualified applicant, to discuss this issue further.

Accordingly, appellant's application is rejected and the decision appealed from is affirmed as modified.

Russell C. Young is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington D.C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J. McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:
Russell C. Young (Certified Mail)
Division of Lands and Recreation
Appeals List No. 1
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DEPT. OF INTERIOR
SACRAMENTO, CAL.
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LAND MANAGEMENT

In reply refer to:
6.05c
Sacramento 076354
February 20, 1964

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D. C. 20240

CERTIFIED MAIL
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DECISION

Forrest B. Evans :
: Public Law 87-851
Yolanda J. Evans :

Decision Affirmed

The above-named claimants have appealed from a decision by the Manager, Sacramento Land Office, dated October 29, 1963, which rejected their application for land containing valuable improvements on an unpatented mining claim, under Public Law 87-851 (Act of October 23, 1962, 76 Stat. 1127). The Manager determined that the claimed land was not a principal place of residence on the crucial date of October 23, 1962.

Federal regulations implementing the Act of October 23, 1962, notably 43 CFR 260.2(a), define the term "qualified applicant" as follows:

> "The term 'qualified applicant' means (1) a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962 or (2) the heirs or devisees of such a residential occupant-owner."

The residence referred to must be a "principal place of residence." The Congress has intended that a principal place of residence be defined as a site suitable for continuous occupancy except during periods when weather and topography make use impossible. Not qualifying are sites given casual or intermittent residential use, such as hunting cabins or weekend retreats.

By quitclaim deed, recorded August 14, 1958, M. R. Evans, father of Forrest B. Evans, conveyed his interest in the claim and improvements to Forrest B. and Yolanda J. Evans (appellants herein). Of the purchase price of $2,000, the total of $1,900 is apparently still owing. Thus, M. R. Evans might be considered a mortgage holder of the interest received by appellants.

The elder Evans continued to reside on the claim until the spring of 1963 when he moved to Medford because of his health. It appears that appellants made use of the mining claim only a week or two each summer as a vacation residence.

Appellants in their statement of reasons, concede that they have not fulfilled the requirements of sec. 2 of the Act, but argue that they are, nevertheless, qualified applicants through sec. 8 of the Act, as the devisees of M. R. Evans.

We believe appellants are in error. Sec. 8 of the Act states that "Rights and privileges to qualify as an applicant under this Act shall not be assignable, but may pass through devise or descent." The latter phrase refers to inheritance either by a properly executed will (devise) or through a controlling statute of descent and distibution (descent) in the event of intestacy. While M. R. Evans still lives, sec. 8 of the act is not applicable.

Moreover, if the 1958 conveyance, referred to by appellants, was not a contract for sale or reserved a mortgage interest in M. R. Evans, then appellants' application must be rejected since they did not use the land and improvements as a principal place of residence on October 23, 1962. In the alternative, it must be rejected because appellants are not the occupant-owners of valuable improvements in an unpatented mining claim.

If it can be shown that M. R. Evans reserved a mortgage interest in the improvements; or that the purported 1958 conveyance was merely a contract for sale; or that M. R. Evans can otherwise show that he still retains sufficient interest in the title to the improvements to qualify under the Act, this decision is without prejudice to the right of M. R. Evans to file an application under the Mining Claims Occupancy Act, supra, provided the conditions imposed by 43 CFR 260.4 and 260.5(c) (1) through (7) have been met.

Accordingly, the decision appealed from is affirmed and the application of appellants is hereby rejected.

Appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D.C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed appellants will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:
Forrest B. Evans (Certified Mail)
Hon. James C. Corman, House of Representatives
Division of Lands and Recreation
Appeals List No. 1
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UNITED STATES
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Bureau of Land Management
Washington, D. C. 20240

In reply refer to:
6.05c
Sacramento 074617

February 20, 1964

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DECISION

Lloyd Overby
Vernon R. Overby
Wallace Todd

Public Law 87-851

Decision Affirmed

The above-named claimants have appealed from a decision of the Sacramento Land Office, dated August 26, 1963, which rejected their application for land containing valuable improvements on an unpatented mining claim, under Public Law 87-851 (Act of October 23, 1962, 76 Stat. 1127). The decision determined that the claimed land was not a principal place of residence of the claimants on the crucial date of October 23, 1962.

Federal regulations implementing the Act of October 23, 1962, notably 43 CFR 260.2(a), define the term "qualified applicant" as follows:

> "The term 'qualified applicant' means (1) a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962 or (2) the heirs or devises of such a residential occupant-owner."

The residence referred to must be a "principal place of residence." The Congress has intended that a principal place of residence be defined as a site suitable for continuous occupancy except during periods when weather and topography make use impossible. Not qualifying are sites given casual or intermittent residential use, such as hunting cabins or weekend retreats.

Appellants' application, dated February 13, 1963, reveal the following data pertaining to their ownership and possession of the claim:

Ownership and Possession

July 23, 1955 to April 13, 1956
L. N. Ring & V. R. Overby - Joint Owners

April 13, 1956 to December 30, 1958
N. Ring Sr. & V. R. Overby - Joint Owners

December 30, 1958 to September 30, 1960
N. Ring Sr. & V. R. Overby - Joint Owners

September 30, 1960 to Present
V. R. Overby, L. B. Overby & Wallace Todd - Joint Owners

In a letter, also dated February 13, 1963, which accompanied the application, appellants stated: "The undersigned Vernon R. Overby has occupied this claim as a homesite continuously since 1946; W. Todd intermittently since 1948; Lloyd B. Overby continuously since 1957, and all three occupy it jointly at present."

On the strength of the application filed, a field examination was conducted during July, 1963. The report of findings, based upon an on-the-ground inspection, indicates that appellants have not resided on the claimed land for many years. Claimants Todd and Vernon R. Overby have homes which are located adjacent to the subject land which were acquired in 1959. Claimant Lloyd Overby owns land in Grass Valley. His legal address, according to the Nevada County Assessor's records, as of February 2, 1962, was 101 S. Church Street, Grass Valley, California. His present place of residence is located on private land adjacent to the subject claim. Thus, the decision appealed from determined that the claimed land was not a principal place of residence on October 23, 1962, for any of the applicants.

In the statement of reasons, appellants have merely presented, in an attempt to controvert the August 26, 1963 decision, conclusionary type statements without any supporting evidence. It is asserted that ". . . Lloyd B. Overby and his predecessors in interest have maintained on the property set forth in their application, his principal place of residence on said property for more than seven (7) years prior to July 23, 1963."

It seems almost unnecessary to comment on the weakness of the appellants' appeal, which contains no evidence whatever to support the statements made. While this office clearly may review the entire record to determine the correctness of the Land Office action, the burden is upon appellants to show error in the decision appealed from. We cannot, merely on the basis of statements, unsupported by adequate proof, change the dispositive decision of the Land Office which was based upon and is supported by clear factual evidence. Appellants were advised of the burden in the final paragraph of the decision from which they are appealing.

It is not enough, in our view, that appellant Lloyd B. Overby has requested a hearing in this matter. Hearings are not granted as a matter of course to determine any issues involved. A hearing is considered an appropriate measure only if there is a reasonable likelihood that it will develop facts which would be decisive of the issues involved. Margaret A. Andrews et al., 64 I.D. 9 (1957). Thus, where, as in the subject case, there is substantial evidence to support the findings upon which an adverse decision is bottomed, without abundant evidence to support a contrary conclusion, a hearing is properly denied.

Accordingly, the decision appealed from is affirmed.

Appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, appellants will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION
Leo J. Todd, Attorney for Appellant (Certified Mail)
Lloyd B. Overby
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United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

APR 6 1971

Mrs. H. S. Gilmore
1005 Eighth Street
Sacramento, California 95814

Dear Mrs. Gilmore:

This responds to your recent letter concerning a Bureau of Land Management decision on mineral patent application Los Angeles 052897 and the adverse mineral claim Los Angeles 052898.

We have enclosed several copies of a decision dated December 5, 1951. Although this date differs slightly from that mentioned in your letter, we believe that this is the decision you seek.

Sincerely yours,

Assistant Director

Enclosures

Appeal to Sec.
affirmed A-30271
8-4-64

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LAND MANAGEMENT
LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In reply refer to:
6.05c
Sacramento 076806

February 20, 1964

Certified Mail
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DECISION

Ray D. Warner : Public Law 87-851

Decision Affirmed, As Modified

The above-named claimant has appealed from a decision of the Sacramento Land Office, dated October 31, 1963, which rejected his application for the sale of land containing valuable improvements on an unpatented mining claim, under Public Law 87-851 (Act of October 23, 1962; 76 Stat. 1127) and the pertinent regulations (43 CFR Part 260). The decision determined that the improvements, held by the claimant, do not occupy land which has been held by the applicant and predecessors in interest as a mining claim for not less than seven years.

The cited public law authorizes the Secretary of the Interior to convey to any occupant of an unpatented mining claim which is determined by the Secretary to be invalid an interest up to and including a fee simple ownership in and to an area within the claim of not more than five acres. A qualified applicant is defined as a residential occupant-owner, as of October 23, 1962, of valuable improvements in the unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962.[1]

In his application, filed September 30, 1963, appellant indicated the improved land to have been embraced in the Birdena Millsite mining claim since approximately 1900 and was in the possession of one William Land as of July 23, 1955. He further indicates that Land vacated the claim during December, 1956 and that the Birdena Millsite Lode Mining Claim was located by Victor Villegas on January 13, 1957. The latter claim was recorded on the same day.

---

[1] The law does not require that a "qualified applicant" or his predecessors in interest be in possession of the mining claim for the seven-year period. The word "possession" refers to improvements in an unpatented mining claim.

Clearly, however, there must actually be an unpatented mining claim on the lands for the period July 23, 1955 through October 23, 1962.

Appellant constructed a cabin on the land in 1951 which has been a place of residence since that date. Appellant resided on his improvements from 1951 until 1956 with the permission of William Land and since 1956 apparently without the permission of Victor Villegas.

In his statement of reasons, appellant asserts that the mining claim of Villegas is not valid as it was filed on non-mineral land; that there has been no discovery of a gold bearing quartz outcropping or quartz seam; that there has been no assessment work done or filed at the County court house; and that when the millsite was abandoned by Land all interest and title thereto reverted back to the government.

At the outset, we cannot sustain the reason for rejection stated in the decision appealed from. The single fact that appellant or his predecessors in interest as the owner or former owners of valuable improvements in an alleged unpatented mining claim, are not or have never been owners of the claim is not fatal to appellant qualifying under the mining claims occupancy act. After a mining claim is believed invalid and all claimants thereto relinquish to the United States all rights in and to such claim which are had under the mining laws, any occupant may file an application if it can be proved that he occupies valuable improvements in the relinquished claim; that such improvements constituted for him a principal place of residence on October 23, 1962; that he and his predecessors in interest were in possession of such improvements for not less than seven years prior to July 23, 1962; and that the land containing his improvements has been embraced in a mining claim for the period July 23, 1955 through October 23, 1962.

While there appears to be a substantial question raised as to whether or not an unpatented mining claim has existed on the land for the required seven-year period, we cannot now make a substantive determination of appellant's remedy under the Act. As explained above, appellant's application is prematurely filed. Accordingly, the decision appealed from is affirmed, as modified.

Moreover, since appellant has no interest in the Birdena Millsite Mining Claim he cannot file an acceptable petition under 43 CFR Part 260.

Our disposition is without prejudice to appellant filing an application on a subsequent date, provided a qualified officer of the United States has given notice that he believes Birdena Millsite Claim to be invalid and relinquishment to the United States of the entire mining claim has been filed or, in the alternative, there has been an adjudication by the United States of the invalidity of the Birdena claim.

Ray D. Warner is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

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Ray D. Warner (Certified Mail)
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Congressman Harold T. (Bizz) Johnson
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6.05c
Sacramento 076829

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

February 25, 1964

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DECISION

Lloyd B. Overby : Public Law 87-851
:
:

Application Rejected

The above-named applicant, on October 7, 1963, filed an application, Sacramento 076829, under Public Law 87-851 (Act of October 23, 1962, 76 Stat. 1127) and the pertinent regulations (43 CFR Part 260) for a portion of the Kellogg Mining Claim described as the W½SE¼NE¼ Sec. 18, T. 16 N., R. 9 E., M.D.M. The Director, upon his own motion, and in the exercise of his supervisory authority, has assumed jurisdiction of this application. Oscar C. Collins, et al. 70 I.D. 359 (1963).

A field investigation has been conducted and a report reflecting the findings prepared. According to the findings of the investigation, the applicant does not meet the "principal residence" requirement of Section 2 of the cited legislation, which is quoted below:

> "For the purpose of this Act a qualified applicant is a residential occupant-owner, as of the date of enactment of this Act, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962."

The residence referred to must be a "principal place of residence." The Congress has intended that a principal place of residence be defined as a site suitable for continuous occupancy except during periods when weather and topography make use impossible. Not qualifying are sites given casual or intermittent residential use, such as hunting cabins or weekend retreats.

Applicant owns land in Grass Valley. His legal address, according to the Nevada County assessor's records, as of February 2, 1962, was 101 S. Church Street, Grass Valley, California. His present place of residence is located on private land adjacent to the subject claim. Although the claim contains buildings owned by the applicant and are used for storage and vehicular servicing facilities, it has not, in recent years, been used as a principal place of residence.

Accordingly, the application of Lloyd B. Overby is hereby rejected.

Lloyd B. Overby is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict complicance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Hoffman
Assistant Director

Enclosure

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Lloyd B. Overby (Certified Mail)
Division of Lands and Recreation
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In reply refer to:
704
Sacramento 074222

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SACRAMENTO LAND OFFICE
1964 AUG 19 PM 2

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

August 12, 1964

DECISION

James F. McClain	:	Application under Mining
	:	Claim Occupancy Act

Case Remanded

James F. McClain has appealed from a decision of the Sacramento Land Office, dated April 22, 1964, rejecting his application under the Mining Claim Occupancy Act of October 23, 1962 (Public Law 87-851, 76 Stat. 1127).

The State Director's memorandum transmitting the appeal to this office requests that the case be remanded for reconsideration of the appellant's application.

Accordingly, the case is remanded for such further action as may be deemed proper.

John B. Piccolo
Chief, Branch of Mining
and Grazing Appeals
Office of Appeals and Hearings

DISTRIBUTION

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James F. McClain
Division of Lands and Minerals
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Appeals List No. 1
MHS

3)

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SACRAMENTO LAND OFFICE

1964 SEP 17 PM 2 35

Mining Claim Occupancy Act: Qualified Applicants 2215.0-5

An application under the Mining Claim Occupancy Act is properly rejected where the applicant fails to show he maintained a principal place of residence on the tract for not less than seven years prior to July 23, 1962, and the evidence in support of his application shows that the site was given only casual or intermittent residential use.

Frank L. Landis, Sacramento 077043 (September 10, 1964)

3)

In reply refer to:
704
Sacramento 077043

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 SEP 17 PM 2 35

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

September 10, 1964

Certified Mail
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DECISION

Frank L. Landis : Application under Mining Claim Occupancy Act

Decision Affirmed

Frank L. Landis has appealed from a decision of the Sacramento Land Office, dated May 22, 1964, rejecting his application to purchase a tract of land under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. secs. 701-709 (Supp. IV, 1964). The application was rejected for the reason that the applicant had not occupied the land as his principal place of residence for not less than seven years, prior to July 23, 1962.

Departmental regulations (43 CFR 2215.0-5) under the act of October 23, 1962, supra, provide in pertinent part:

> "(a) The term 'qualified applicant' means . . . a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence . . . for not less than seven years prior to July 23, 1962 . . ."
>
> "(b) . . ."
>
> "(c) . . ."
>
> "(d) The term 'a principal place of residence' means an improved site used by a qualified applicant as one of his principal places of residence except during periods when weather and topography make it impractical for use. The term does not mean a site given casual or intermittent residential use, . . ."

The appellant alleges that he always intended to maintain the dwelling on the subject tract as his permanent home but because of extreme weather and illness, he was not able to live there permanently. The appellant claims he occupied the land approximately as follows:

1956	May to November	-	Approximately 6 months
1957	Mid-April to latter part of May	-	" 5 weeks
1958	May-June	-	" 6 weeks

1959	June and August to September	- approximately	2 months
1960	Late spring and early summer	- "	6 weeks
1961	May	- "	4 weeks
1962	May and June	- "	5 weeks

Mr. Landis filed a petition in the Sacramento Land Office on April 3, 1963, in which he gave the following information under paragraph 12:

> "Periods of residence: 'Oct. 1953 to Dec. 1956 Permanent Six to Seven Month. Summer. Since 1957 to date'."

Mr. Landis also stated in paragraph 13 of the form:

> "Type of Occupancy, (Permanent home, hunting cabin, summer home, other) 'Summer home, Since 1957'."

The periods of occupancy claimed by the appellant show an average of approximately 8 weeks or 15% per calendar year. Therefore, since the appellant admits having lived at various places, other than on the tract sought, for approximately 85% of the time, it follows that the subject tract could not have been occupied by him as a principal place of residence during the seven year period required by the Act, supra. In such circumstances, his occupancy is properly construed as "casual or intermittent" and this, the cited regulation expressly excludes from favorable consideration.

Accordingly, the decision is affirmed.

Frank L. Landis is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo

Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION

Tebbe, Correia & Kleaver, Attorneys at Law (Certified Mail)
Frank L. Landis
Hon. Harold T. Johnson, House of Representatives
Regional Forester, U. S. Department of Agriculture
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
MHS

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1964 SEP 17 PM 2 35

appeal taken
affirmed ltr Dec. A-30373 10-26-65

DOCKET FILES

Mining Claim Occupancy Act: Qualified Applicants 2215.0-5

Short and periodic visits to a mining claim are considered insufficient to constitute the claim as the applicant's principal place of residence as defined in section 2 of the Act of October 23, 1962. It is proper to reject an application filed under the Act where the applicant fails to show that he is a qualified residential occupant-owner of a mining claim as of the date of the enactment of the Act.

H. T. Crandell, Sacramento 076248 (September 18, 1964

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 SEP 30 AM 10 00

In reply refer to:
704
Sacramento 076248

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

September 18, 1964

Certified Mail
Return Receipt Requested

DECISION

H. T. Crandell : Application to Purchase under the Act of October 23, 1962

Decision Affirmed

Mr. H. T. Crandell has appealed from a decision of the land office at Sacramento, California, dated May 13, 1964 rejecting his above-identified application to purchase a portion of the lands formerly embraced in his unpatented mining claim under the provisions of the Mining Claim Occupancy Act of October 23, 1962 (76 Stat. 1127). The application was rejected for the stated reason that the applicant had not met the "principal residence" requirement of section 2 of the Act.

The decision appealed from recites that the applicant did not make the land involved a principal place of residence during the seven year period from July 3, 1955 to October 23, 1962, as specified in the Act of October 23, 1962, supra. This conclusion was based upon the finding that the "old cabin" on the claim did not provide complete residential accomodations, and the 15' x 20' cabin, which was constructed as a wash room and bathhouse, was not converted into a livable residence until after October 23, 1962. The decision also recites that the applicant has not provided significant information as to the various dates he has resided on the site, and investigation disclosed that the Crandells have spent a two weeks vacation period and periodic weekends on the land applied for; and that the applicant stated that he is a Federal employee, and allowed only a certain amount of annual leave each year, which is all spent on the land as far as it will go.

The appellant contends on appeal, among other things, that (1) his vacation period is one month, plus various holidays; his son gets leave from the Army, and his wife spends additional time there with a neighbor on the adjoining claim, (2) in a letter of October 28, 1963, to the Forest Service, he stated that "this year we will have used it /the land/ ten months of the year for varying periods of time, but not less than five days at a time", (3) the Forest Service could have found more reliable sources from which to get information regarding his residential use of the property, (4) he has shown that he has occupied the cabin as a home on a fairly regular basis, which is all that is required, and it never has been used for weekends, hunting, or a two week vacation place, (5) when he purchased the claim there were three buildings on it, two cabins and an old building converted into a wash house, or outhouse;

when he decided to make improvements, he picked the "outhouse" to improve, as it contained the most expensive features, namely the plumbing and septic tank. The appellant concludes that the letter bearing significant information as to use of the land was omitted from the file sent in by the Forest Service in Weaverville; information obtained by the Forest Service as to the amount of time "available" to be spent by the Crandells at the claim is inaccurate; and, improvements to "outhouses" is regarded as improvements to all, as an "outhouse" is an integral part of the building complex.

The record shows that the appellant purchased the J. Barton Placer Mining Claim in August 1961. The claim is part of the old townsite of Dedrick, and is located within the Shasta-Trinity National Forest in California, under the jurisdiction of the Forest Service, United States Department of Agriculture. For this reason investigation as to the use made of the land in the claim was conducted by that agency. The claim was relinquished by the appellant on August 20, 1963, subsequent to the filing of his application to purchase a portion of the land therein.

In its report as to the residence of the appellant on the claim, the Forest Service concluded that the appellant did not qualify for relief under the applicable law and regulations for the reason that the old cabins on the claim do not provide complete residential accomodations; the cabin originally constructed as a washroom and bathhouse was not converted into a residence until after October 23, 1962, and during the period from July 23, 1955 to October 23, 1962, the site for the dwelling as shown on the application could properly be classed as an unimproved area; statements made by others indicate that the Crandells spent only a two week vacation plus periodic weekends on the claim; the appellant in his letter to the Forest Service of October 28, 1963 [referred to by the appellant in his appeal] indicates that his status as a Federal employee allows him only a certain amount of annual leave per year.

It is noted that in the October 28, 1963 letter, the appellant states "we have never contended that our Dedrick property is the principal place of residence. If the law stated that it must be The principal residence, we would have waited the five years the law gives to file, for within that time I will have been retired and make it The principal place of residence or at least wait another year for our son to get out of the Army and live there."

Section 2 of the Act of October 23, 1962, *supra*, provides that:

> "For the purpose of this Act a qualified applicant is a residential occupant-owner, as of the date of enactment of this Act, of valuable improvements in an unpatented mining claim *which constitutes for him a principal place of residence* and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962." (Emphasis supplied).

It is apparent from the record that the appellant was not a qualified resident-occupant of the mining claim as defined in the Act, at the time of its enactment on October 23, 1962. Upon consideration of the entire record, it is our belief that the appellant's short and periodic visits to the claim as indicated in this case are not sufficient to qualify him for relief under the Act.

Accordingly, the decision rejecting the application to purchase is affirmed.

Mr. H. T. Crandell is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

James F. Doyle
Chief, Office of Appeals
and Hearings

Enclosures 2

DISTRIBUTION
Mr. H. T. Crandell (Certified Mail)
Regional Forester, Shasta-Trinity National Forest
U. S. Forest Service, Recreation and Land Use
Hon. John F. Baldwin, House of Representatives
Hon. Harold T. (Bizz) Johnson, House of Representatives
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
RBO

appeal to Sec
affirmed A-30374
11-17-65

DOCKET FILES

Mining Claim Occupancy Act: Qualified Applicants 2215.0-5

An application under the Mining Claim Occupancy Act is properly rejected where none of the applicants had used the tract as a principal place of residence for not less than seven years prior to July 23, 1962, and the evidence in support of the application shows that the applicants used the tract only casually or intermittently for residential purposes.

Joseph W. Hinton et al., Sacramento 075341 (September 23, 1964)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 OCT 5 AM 10 00

In reply refer to:
704
Sacramento 075341

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

September 23, 1964

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Joseph W. Hinton : Application under Mining
Eustacio C. Reyes : Claim Occupancy Act
James E. Easley :

Decision Affirmed

The above-named applicants have appealed from a decision of the Sacramento Land Office, dated June 30, 1964, rejecting their joint application to purchase a tract of land under the Mining Claim Occupancy Act of October 23, 1962 (76 Stat. 1127; 30 U.S.C. sec. 701-709, Supp. IV 1964). Their application was rejected for the reason that the applicants had not occupied the land as a principal place of residence for not less than seven years prior to July 23, 1962.

The appellants allege as follows in their statement of reasons for appeal:

1. The applied-for lands have been and were, prior to October 23, 1962, a principal place of residence for the applicants and their occupancy complied with the requirements of the regulations.

2. They were assured by responsible officials of the Bureau of Land Management that their occupancy was in substantial compliance with the law. That by reason of these assurances the appellants incurred expenses for improvements.

3. They intended to make the subject land their principal place of residence within the meaning of the regulations.

The appellants' also request a hearing on the issues of fact.

The case file contains a statement by James E. Easley dated November 15, 1963, as follows:

> "I James Easley affirm that my parents . . . have lived on the . . . mining claim . . . since . . . October of 1960. At no time since Oct. of 1960 have I or Joseph W. Hinton or Eustacio C. Reyes claimed the above property to be our permanent residence. This property is used by the owners as a summer and week end cabin."

The case file also contains a statement by Joseph W. Hinton who confirms Mr. Easleys' statement that his parents had lived on the land from November 20, 1960 until about September 14, 1963.

A report of field examination prepared by a Bureau of Land Management valuation engineer, states that there was a small one-room cabin on the claim at the time it was purchased by the appellants in 1960.

Departmental regulation 43 CFR, 1964 revised, 2215.0-5 expressly limits the benefits of the Act to "a residential occupant-owner" who used the unpatented mining claim as "a principal place of residence" "for not less than seven years prior to July 23, 1962." The separate statements made by Messrs. Easley and Hinton establish conclusively that none of the appellants qualify for relief under the provisions of the Mining Claim Occupancy Act, supra, and the regulations thereunder.

Moreover, the above cited regulations also provide that the term "a principal place of residence . . . does not mean a site given casual or intermittent residential use, such as for . . . weekend occupancy." Mr. Easley's categorical admission that the house was used as a weekend cabin, and Mr. Hinton's admission that persons other than he were the regular occupants of the house prior to July 23, 1962, are sufficient to exclude them from the benefits of the Act.

The Mining Claim Occupancy Act, supra, and regulations thereunder apply only to a residential occupant owner, and not to other persons who occupied the land with the permission of the claimant. Nor does the mere intention of a mining claimant to occupy the premises as a principal place of residence some time after July 23, 1962, satisfy the requirements of the regulations under the Act, supra.

Nothing in the case file supports the appellants' allegation regarding assurances given to the appellants by officials of the Bureau of Land Management. Moreover, the Department has consistently held that the United States is not bound or estopped by statements or acts of its officers or agents which are not authorized by law. Donald S. Tedford, A-29963 (March 24, 1964).

Having determined that the appellants' admissions and the evidence in the case are sufficient to resolve the issue involved, a hearing would serve no useful purpose. Accordingly, the request for a hearing is denied. Cf. Margaret A. Andrews et al., 64 I.D. 9 (1957).

Accordingly, the decision is affirmed.

James W. Hinton, Eustacio C. Reyes and James E. Easley are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Ciccolo
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosure

DISTRIBUTION:
Elmer L. Winger, Attorney at Law (Certified Mail)
Joseph W. Hinton
Div. of L&M, S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
MHS

DOCKET FILES

Mining Claim Occupancy Act: Qualified Applicants 2215.0-5

An application under the Mining Claim Occupancy Act is properly rejected where the applicant fails to show he maintained a principal place of residence on the tract for not less than seven years prior to July 23, 1962, and the evidence of record shows that the site was given only casual or intermittent residential use.

Melvin I. Whaler, Sacramento 076615 (September 30, 1964)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1964 OCT 12 AM 10 00

In reply refer to:
704
Sacramento 076615

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

September 30, 1964

Certified Mail
Return Receipt Requested

DECISION

Melvin I. Whaler : Application under Mining Claim Occupancy Act

Decision Affirmed

Melvin I. Whaler has appealed from a decision of the Bureau's Sacramento Land Office, dated May 26, 1964, rejecting his application to purchase a tract of land under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. 701 et seq (Supp. V, 1959-63). The application was rejected on the basis of a report of field investigation which showed that the applicant had not occupied the tract sought as a principal place of residence for not less than seven years prior to July 23, 1962, but instead, had used the site only occasionally since 1959.

Section 2 of the Mining Claim Occupancy Act, supra, defines a qualified applicant as

> "a residential occupant-owner of valuable improvements in an unpatented mining claim which constitutes for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962."

Departmental regulations (43 CFR 2215.0-5) under the Act, provide in pertinent part:

> "(d) The term 'a prinicpal place of residence' means an improved site used by a qualified applicant as one of his principal places of residence except during periods when weather and topography made it impractical for use. The term does not mean a site given casual or intermittent residential use, ... "

The appellant's appeal, for the most part, contains matters unrelated to the issue, which he asserts are extenuating circumstances that should be considered. He alleges in substance that the house on his mining claim was his principal place of residence until November 1958, when he was "bumped" from his job in Keddie, California, to the nearest available job in Oroville, California, that he roomed and boarded in Oroville until he "bumped" back to his job at Keddie in December 1960, at which time he moved to the home where his wife lived in Greenville, California. He states that during the periods he lived in Oroville and Greenville, he spent his week-ends at the "old home place".

The cited law and regulations clearly define what constitutes a qualified applicant and a principal place of residence. By his own admission, the appellant did not reside on the mining claim since December 1958, except on week-ends. In such circumstances his occupancy is properly construed as "casual or intermittent," and this, the cited regulation expressly excludes from favorable consideration.

Accordingly, the decision appealed from is affirmed.

Melvin I. Whaler is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo

Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION:

Mr. Melvin I. Whaler (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
RLE

DOCKET FILES
McOA

Appeals Procedure: Generally 1840

Where an appellant states that certain documents required in the decision appealed from have since been obtained and will be filed, the case will be remanded for further appropriate processing.

Robert S. Horner, Riverside 03971 (October 9, 1964)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 OCT 19 AM 10 00

In reply refer to:
704
Riverside 03971

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

October 9, 1964

DEPT. OF INT.
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 OCT 19 AM 10 00

DECISION

Robert S. Horner : Application to Purchase Under the Act of October 23, 1962

Case Remanded

Robert S. Horner has appealed from a decision of the Bureau's Riverside District and Land Office, dated July 21, 1964, which rejected his application to purchase a one-acre portion of the unpatented Amacopa placer mining claim, pursuant to the act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. 701-709 (Supp. V, 1964). The application was rejected for the stated reason that the applicant is the owner of only a small fraction of the mining claim, which claim has not been relinquished. The decision concluded that since the applicant has only a limited interest in the claim, he cannot qualify at this time for relief under the Act and pertinent regulations.

However, the decision further stated that the rejection was without prejudice to the claimant filing an application on a subsequent date, provided relinquishment to the United States of the entire mining claim has been filed.

In his appeal the appellant states, in material part, as follows:

> "Applicant has now obtained the relinquishment by all claimants referred to in the Decision, and in addition the appropriate persons have agreed to file petitions as indicated in the Decision."

The appellant therefore requests that the case be returned to the Riverside District and Land Office so that these documents may be filed and the matter disposed of.

In view of the representations made in the appeal, the case is remanded to the Riverside District and Land Office for further processing as may be appropriate.

Chief, Office of Appeals
and Hearings

DISTRIBUTION
Bruce D. Varner, Attorney for appellant
Robert S. Horner
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
RLE

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1964 OCT 23 PM 2 54

DOCKET FILES

Mining Claim Occupancy Act: Generally 2215

It is within the discretionary authority of the Secretary of the Interior, or his delegate, to determine whether or not a fee simple or life estate will be conveyed to an applicant under the Act of October 23, 1962. The amount to be charged for any interest to be conveyed under the Act will be based on the fair market value of the land to be determined as of the date of the appraisal.

Vaughn M. Gilbert and Evelyn Gilbert, Riverside 02726 (October 16, 1964)

In reply refer to:
704
Riverside 02726

October 16, 1964

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D. C. 20240

DECISION

Vaughn M. Gilbert and	:	Application to Purchase under the
Evelyn E. Gilbert	:	Act of October 23, 1962.
	:	

Decision Affirmed as Modified

Vaughn M. Gilbert and Evelyn E. Gilbert have appealed from a decision of the land office at Riverside, California, dated April 14, 1964, in which Vaughn M. Gilbert was offered a life estate in connection with his above-identified application to purchase five acres of his relinquished "Dee-Jay" mining claim, pursuant to the Act of October 23, 1962 (30 U.S.C., 701). 1/

The decision appealed from recites that the charge for the life estate offer is $540, payment of which should accompany the return of the executed Life Estate Offer Forms, C.04-22 forwarded to the appellants by the land office.

On appeal the appellants contend, in substance, that (1) they have occupied the claim for some 20 years, and they have been classified /by Bureau officials/ as qualified applicants, and, (2) they are asking for a recommendation and permission to change the offer made by the land office for a life lease to a fee simple in the five acres involved. The appellants also allege that they have been informed by /Bureau/ officials that the decision to offer a lease rather than a fee simple title to the subject land is because of the possible need of the area for recreational purposes, but, they believe there is an error on this point. The appellants claim that the land in question is not suitable for recreational purposes because the little streams, including Cottonwood Creek upon which the subject land is located, flow down from the mountains and meander through sagebrush country containing only a few trees or willows at scattered intervals; these streams are not fished

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1/ The decision, in addition to accepting the relinquishment of the "Dee-Jay" mining claim owned jointly by Vaughn M. and Evelyn E. Gilbert, rejected in its entirety, the application, Riverside 02725, filed by Mrs. Gilbert to purchase five acres under the Act of October 23, 1962, supra. An appeal, however, has been submitted by the Gilberts only as it pertains to the application, Riverside 02726, and subject of this decision.

extensively because fisherman find that the fish are few and far between; the volume of water seems to decrease each year; the area is so remote that a very few hunters or fishermen enter the area; and, the area is not now needed for recreation, nor will it be in the foreseeable future. The appellants also question the rental of $540 placed on the land on the basis of the fair market value, stating that the lease offer is more than 20 times the fair market value, and the offer is arbitrary, unfair, and unjust and not according to law. The appellants conclude the area would be benefited by granting them a fee simple title to the land involved.

Whether a fee simple title or less will be conveyed to an applicant under the Act of October 23, 1962, supra is a discretionary authority that may be exercised by the Secretary of the Interior as set forth in Section 1 of the act, which specifically provides that:

> ". . . the Secretary of the Interior may convey to any occupant of an unpatented mining claim which is determined by the Secretary to be invalid an interest, up to and including a fee simple, in and to an area within the claim of not more than (a) five acres or (b) the acreage actually occupied by him, whichever is less. The Secretary may make a like conveyance to any occupant of an unpatented mining claim who, after notice from a qualified officer of the United States that the claim is believed to be invalid, relinquishes to the United States all right in and to such claim which he may have under the mining laws. Any conveyance authorized by this section, however, shall be made only to a qualified applicant, as the term is defined in section 2 of this Act, who applies therefor within five years from the date of this Act and upon payment of an amount established in accordance with section 5 of this Act." (Emphasis supplied).

The amount to be charged for any interest in land applied for, whether it be a fee simple or life estate, is established in accordance with the provisions of section 5 of the Act, which states that:

> "The Secretary of the Interior, prior to any conveyance under this Act, shall determine the fair market value of the interest to be conveyed, exclusive of the value of any improvements placed on the lands involved by the applicant or his predecessors in interest. Said value shall be determined as of the date of the appraisal. In establishing the purchase price to be paid by the applicant for the interest, the Secretary shall take into consideration any equities of the applicant and his predecessors in interest, including conditions

> of prior use and occupancy. In any event the purchase price for any interest conveyed shall not exceed its fair market value nor be less than $5 per acre. The Secretary may, in his discretion, allow payment to be made in installments." (Emphasis supplied).

Subsequent to the filing of their appeal, the appellants suggested that they be allowed to acquire a fee simple title to only that portion of the land upon which their building improvements are located, and to be confined to one side of Cottonwood Creek. Because of this offer on the part of the appellants, the case was remanded for further consideration by the appropriate Bureau officials. The case has been returned with the recommendation that only a life estate, as first offered, be granted the appellants.

The recommendation was based on the fact that (1) conferring fee simple title to the subject land would place a privately owned tract of land completely within a large block of public domain at a time when the Bureau is attempting to consolidate its holdings in similar areas, (2) the applied for tract is situated along a perennial flowing stream in an area having a high potential for recreational development, (3) transfer of title to the subject land may have a tendancy to contribute to the sanitary and pollution problems in the area in the future, (4) the appellants have no great need for the subject land, because, by their own admission, they own 400 acres of land within five miles of the land, 180 acres of which is being irrigated, and which among other improvements, includes a modern three-bedroom house, and (5) the appellants have not lived continuously on the land by their own admission--more than 25 per cent of the time--and the improvements on the land are the kind usually associated with the type of occassional or temporary week-end and summer type occupancy.

Although it has been determined that the appellants are qualified to receive an interest in up to five acres of the relinquished "Dee Jay" mining claim, after carefully reviewing the entire record and the appeal in the case, we concur, for the reasons stated above, that the appellants should be granted a life estate only to the land involved.

With regard to the rental assessed for the life term of the offer in the amount of $540, this rental is based on the appraised value of comparable lands in the area, particularly on United States Forest Service life estate leases of similar lands. The $540 is the total sum that the appellants would be required to pay for the term of the life permit to use the land in question. It appears that this amount was established in accordance with the Department's standard appraisal procedures, is consistent with the facts and is entirely proper. This amount may be paid in a lump sum or in five equal annual installments of $108 each.

Accordingly, the decision appealed from is affirmed as herein modified.

The appellants are allowed 30 days from the receipt of this decision within which to file the executed Life Estate Offer Form C.04-22, together with a remittence in the amount of $540 lump sum payment, or the amount of $108 for the first annual installment, with the District Manager, Riverside District and Land Office, Bureau of Land Management, 1414 - 8th Street, P. O. Box 723, Riverside, California 92502, failing in which the case will be closed without further notice.

Vaughn M. Gilbert and Evelyn E. Gilbert are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington D.C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellants will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

James F. Doyle

Chief, Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Vaughn M. Gilbert and Evelyn E. Gilbert (Certified Mail)
Hon. Thomas H. Kuchel, U.S. Senate, Washington, D. C.
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
RBO

appeal to Sec
Reversed & remanded
A-30397 2-15-66

DOCKET FILES

Mining Claim Occupancy Act: Qualified Applicants 2215.0-5

An application to purchase under the Mining Claim Occupancy Act is properly rejected where the applicant fails to show that the mining claim constituted a principal place of residence, as of October 23, 1962, the evidence of record showing that the site was rented to other persons most of the time and given only casual or intermittent use by the applicant during a greater portion of the two-year period immediately preceding the date of the passage of the act.

Ola N. McCulloch Sibley, Sacramento 077644 (October 27, 1964)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1964 NOV 2 AM 10 00

In reply refer to:
704
Sacramento 077644

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

October 27, 1964

Certified Mail
Return Receipt Requested

DECISION

Ola N. McCulloch Sibley : Mining Claim Occupancy Act

Decision Affirmed

Ola N. McCulloch Sibley has appealed from a decision of the Bureau's Sacramento Land Office, dated May 25, 1964, rejecting her application to purchase a tract of land under the Mining Claim Occupancy Act of October 23, 1962, (30 U.S.C. 701 et seq.). The application was rejected on the basis of a report of a field investigation which shows that the subject lands were not a principal place of residence of the applicant as of October 23, 1962, but instead the applicant had occupied the site only until August 1960, and since that date the house has been leased and rented up to the present time. The decision also held that during an interview with the applicant she admitted that the property had not been her principal place of residence since August 1960 and that she had rented the house on three different occasions.

Section 2 of the Mining Claim Occupancy Act, *supra*, defines a qualified applicant as

> "A residential occupant-owner of valuable improvements in an unpatented mining claim which constitutes for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962."

Departmental regulations (43 CFR 2215.0-5) implementing the Act, provide in pertinent part:

> "(d) The term 'a principal place of residence' means an improved site used by a qualified applicant as one of his principal places of residence except during periods when weather and topography made it impractical for use. The term does not mean a site given casual or intermittent residential use, ..."

On appeal, the appellant contends, among other things, that the decision is in error by holding that she does not meet the requirement of a principal place of residence under the cited law. The appellant alleges, in substance, that she and her first husband, Hobart McCulloch, who conveyed the mining claim to her on August 8, 1960, lived on the land from 1936 until his death on August 30, 1960; that upon his death, she had to immediately have help because of a nerve and back injury which prevented her from dressing herself completely, affected her movements and could cause her to lose her balance any moment. The appellant states that Mr. and Mrs. Wallen of Ione, California were the only friends who knew of her disability so she went to their house to be cared for, and from which she could go back and forth to her home to check on vandalism and trespass. The appellant claims that due to her illness, Mrs. Mable Knowland of Stockton, California was her constant companion from October 1960 for almost a year and accompanied her when she went to her property; that in order to protect it from vandals, she rented her home as follows:

(1) Andy Podesta from October 7, 1960 to May 7, 1961 with the condition that he protect the place from harm and pay $70 per month.

(2) A young couple lived in the house a short time between May 7, 1961 and March 1962, but she (the appellant) was there most of that period.

(3) David Bloyed rented the house from February 13, 1962 to September 19, 1962 for $75 per month.

The appellant asserts that during the periods Messrs. Podesta and Bloyed lived in her home she reserved her own living quarters with permission to use them at any time. The appellant further alleges that she and her present husband, /M. C./ Sibley, lived in her home full-time from October 9, 1962 to October 4, 1963. On the latter date she leased her home to Jim Greer for a year at $100 per month. She states that she and her husband are presently living in Stockton, California, but they can move into her home at any time it is vacated because she still has much of her belongings stored in a building next to the house. The appellant contends that neither she nor her present husband were ever questioned concerning their residence on the mining claim site, and she requests that her application be allowed.

The appellant's assertions are without merit and contrary to the evidence contained in the record. A supplemental report of a field investigation, substantiated by exhibits and affidavits, shows that between October 1960 - October 1963 the appellant leased and rented subject house as follows:

(1) Mr. and Mrs. Andrew Podesta, informal lease from October 1960 to June 1, 1961

(2) Mr. Jimmie Clark, from June 7, 1961 to August 5, 1961

(3) Mr. and Mrs. Ronald Furlong, from August 29, 1961 to the first week in February 1962

(4) Mr. and Mrs. Bloyed, from February 13, 1962 to September 19, 1962

(5) Mr. and Mrs. Jim Greer leased the property October 1, 1963 for one year.

None of the above renters were caretakers of the property or obligated to care for the appellant in case of illness, nor were there any agreements that the appellant could come and go or stay in the house. During the periods the house was rented to Podestas and Bloyeds, the appellant reserved one room for storage. She tried to sell the property to the Greers, stating that she could give clear title. Mr. Sibley stated at the time, "My wife likes to live in the city - she is sick of the country." Also between the above dates the appellant advertised the house for rent on five occasions in the local newspaper. The dates of four advertisements and the residence of the appellant at that time are: (1) August 17, 1961, Lee Vining, California, (2) February 1962, the telephone numbers of two friends were listed to contact, (3) March 7, April 18, 1963, Stockton, California. In addition, evidence of record shows that the appellant registered on April 11, 1962 for the purpose of voting in San Joaquin County, giving her residence address as Stockton, California, and that no one lived in the house full-time between October 1962 - October 1963; and records obtained from the local power company show that during that period no power was used in February, March, April and July, and only a minimum of power used in May, June, August and September. Furthermore, on June 18, 1963, the appellant and her husband told the Bureau's Valuation Engineer and Land Examiner that they had not lived in the house full-time since 1960, but they frequently used it on weekends.

The above-cited law and regulations clearly define what constitutes a qualified applicant and a principal place of residence. The record shows that the mining claim site has not constituted a principal place of residence of the applicant since 1960, but instead the house has been rented for financial gain and the appellant has resided at other places. Also, by her own admission, the appellant did not reside on the mining claim since August 1960, except on weekends. In such circumstances the occupancy is properly construed as "casual or intermittent," and this the cited regulations expressly exclude from favorable consideration.

Accordingly, the decision appealed from is affirmed.

Ola N. McCullock Sibley is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo

Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosure

DISTRIBUTION

H. S. Gilmore, Agent for appellant (Certified Mail)
Ola N. McCulloch Sibley
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
RLE

appeal to Sec
affirmed A-30386
5-12-65

DOCKET FILES

Mining Claim Occupancy Act: Generally 2215

An application under the Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. secs. 701-709 (Supp. V, 1964), to purchase a tract of land that has been patented is properly rejected.

Pollyanna Rice and Robert F. Henderson, Sacramento 078555 (October 27, 1964)

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1964

In reply refer to:
704
Sacramento 078555

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

October 27, 1964

Certified Mail
Return Receipt Requested

DECISION

Pollyanna Rice and Robert F. Henderson	:	Application under Mining Claim Occupancy Act

Decision Affirmed

Pollyanna Rice and Robert F. Henderson have appealed from a decision of the Sacramento Land Office dated August 19, 1964, rejecting their application under the act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. secs. 701-709 (Supp. V, 1964), to purchase a tract of land covered by their purported mining claim. The application was rejected because the land applied for, which was determined to be located in Sec. 27, T. 5 N., R. 1 W., H. M., Humboldt County, California, is patented and therefore not under the jurisdiction of this Department.

The appellants allege that they located a mining claim on the land sought, have lived on the land during the past 12½ years, and have "squatters" rights.

Bureau records disclose that all of the lands in Sec. 27 have been patented, without reservation of minerals to the United States, on various dates between 1866 and 1902. Once a patent is issued, this Department loses all jurisdiction over the patented land. The Dredge Corporation, A-29997 (June 5, 1964); Tennes J. Aarstad, A-28437 (September 8, 1960).

Accordingly, the rejection of the appellants' application was proper, and the decision appealed from is affirmed.

Pollyanna Rice and Robert F. Henderson are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosure

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Appeals List No. 1
MHS

DOCKET FILES

[illegible]

Mining Claim Occupancy Act: Qualified Applicant: [illegible]

An application to purchase under the Mining Claims Occupancy Act of October 23, 1962, is properly rejected where the applicant fails to establish that he has [illegible] the residency requirements of the Act.

[illegible] L. [illegible] (March [illegible], 19[illegible])

DISTRIBUTION

Philippe Rice and Robert F. Henderson ([illegible])
Div. of LMM DAD (4)
Div. of LMM TH (2)
[illegible] Line No. 2
MWS

appeal to Sec
affirmed A-30480
5-31-66
Pub.

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1965 APR 7 PM 2 16

Mining Claim Occupancy Act: Qualified Applicant 2215.0-5.

An application to purchase under the Mining Claim Occupancy Act of October 23, 1962, is properly rejected where the applicant fails to establish that he has satisfied the residence requirements of the Act.

Christian E. Wicks, Sacramento 078735 (March 11, 1965)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
704
Sacramento 078735

March 11, 1965

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DECISION

Christian E. Wicks : Public Law 87-851

Decision Affirmed

Christian E. Wicks has appealed from a decision of the Land Office at Sacramento, California, dated October 22, 1964, rejecting his above-identified application to purchase a certain tract of land pursuant to the Mining Claim Occupancy Act of October 23, 1962 (30 U.S.C. 701 et seq.). The stated reason for the rejection was that the land was not, on October 23, 1962, a principal place of residence for the appellant; that occupancy was limited largely to occasional week-end and summer vacation use by members of his family. The decision also denied the appellant's petition to vacate the Land Office decision of February 27, 1963, which declared the lode mining claim on the land in question null and void ab initio.

On appeal Mr. Wicks asserts, in substance, that his approximately four months of residence on the mining claim each year qualifies it as his principal place of residence. He recites that although during the required residence period from July 23, 1955 through October 23, 1962, he spent approximately equal periods of time with each of his six children, he lived in his only own home on the mining claim from about Decoration Day to late September or October and sometimes into November, or about four months each year. He states that the time he spent at any other one place of residence, that is, the other eight months of the year divided into approximately equal periods of time spent with each of his children, amounted to less than one and one-half months. The appellant, however, has submitted no documentary or other significant evidence in support of these assertions.

Section 2 of the Mining Claim Occupancy Act, supra, and the regulations implementing the Act (43 CFR 2215.0-5) define a qualified applicant as

> ". . . a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962."

The Land Office rejection of the appellant's application is adequately supported by the record. It was based upon a report of field examination of the land in question as well as other information assembled by qualified personnel of this Bureau.

The record discloses that the appellant's claimed occupancy is at variance with information obtained from impartial individuals employed or stationed in the area. One, a District Ranger of the California Division of Forestry, stationed in the area (at Colfax, California) for 13 years, stated he had seen Mr. Wicks at the cabin site but Mr. Wicks had definitely not lived there for any period of time; the cabin was most often used on week-ends or at periods during summer vacation by married children of Mr. Wicks. [1] Others, including personnel of the local bank, and persons employed at the local post office for seven or more years and who delivered mail to residents in the vicinity of the Wicks cabin, had never heard of Mr. Wicks.

In addition, the record discloses that from physical evidence the cabin would ordinarily not be considered suitable for more than occasional shelter, so that occupancy would at best be casual or intermittent. Such occupancy is expressly excluded from favorable consideration by the pertinent regulation 43 CFR 2215.0-5(d). Cf. Mrs. B. F. Rorick, Arizona 032662 (October 27, 1964).

The appeal has been carefully considered and the appellant's unsupported statements are found insufficient to show error in the decision appealed from or to establish that he has satisfied the residence requirements of the Mining Claim Occupancy Act, supra.

Accordingly, the decision appealed from is affirmed.

Christian E. Wicks is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C., 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo
Chief, Branch of Land Appeals,
Office of Appeals and Hearings

Enclosures 2

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[1] Several times during the fire season, cabins in the area, including the Wicks cabin near Colfax, were inspected for compliance with fire regulations.

DISTRIBUTION:

Mrs. H. S. Gilmore (Certified Mail)
Mr. Christian E. Wicks
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
MAG

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Mining Claim Occupancy Act: Generally 2215

Where the Land Office determines that a fee simple estate cannot be granted under the Mining Claim Occupancy Act because of the high cost to the applicants of a survey, and where the applicants have not been formally advised of the cost of survey, as required by 43 CFR 2215.3, the case will be remanded for compliance with such regulation.

William T. Lowe, et al., Sacramento 076883 etc. (April 21, 1965)

In reply refer to:
704
Sacramento 076883
077401
077622

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

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SACRAMENTO LAND OFFICE
1965 MAY 6 AM 10 00

April 21, 1965

DECISION

William T. Lowe :
Alice Juanita Meier : Mining Claim Occupancy Act
Wallace J. and Floy A. Harold :
:

Decision Reversed
Cases Remanded

The applicants named above have filed separate appeals from a decision of the Sacramento Land Office, dated October 8, 1964, dismissing their protests to the offers of life estates, and thereby denying their applications for fee simple estates, to certain tracts of unsurveyed land under the Mining Claim Occupancy Act of October 23, 1962 (76 Stat. 1127; Public Law 87-851; 30 U.S.C. 701-709).

The reasons given for dismissing the protests are as follows:

> "The record shows that the principal obstacle to title transfer of the subject tracts at this time to be preparation of a supplemental plat of survey, which is required in order to describe the land in accordance with the public land surveys and determine the exact acreage. To determine the acreage and subdivide the area into parcels at present would involve survey costs almost equal to the value of the land and would greatly increase the cost of the parcels to the applicants. At such time as the land can be surveyed and a supplemental plat is prepared, a further review will be made and issuance of fee title will be given consideration."

The appellants contend that they are entitled to a fee simple estate in the land.

The foregoing is the only reason set forth in the record for denying at the present time the applications for fee simple estates and offering instead life estates. The Acting District Manager, Redding, California, reports:

> "The lands involved are suitable for title transfer, but due to the excessive cost of survey, and the applicant's inability to pay for same, we must proceed with life estate offerings. We are requesting that the Division of Engineering schedule this area for field survey. Once this is done, and a supplemental plat can be prepared subdividing MS 4443 into four lots, we would recommend offering fee simple title to the applicants. However, it will probably be several years before this can be done, so it is felt we should proceed with life estate offers."

43 CFR, Section 2215.3 provides in part:

> "Where the authorized officer determines that an interest in the lands applied for can be conveyed, he will submit to the applicant an offer to convey, specifying the term of the estate offered, * * * the cost of survey, if any * * *." (Underscoring added)

The record does not show that the applicants have been informed of the cost of survey as required by 43 CFR 2215.3. Nor does it show that they have refused to pay the cost of survey, whatever that may be.

Accordingly, the case is remanded for compliance with 43 CFR 2215.3, as indicated above. In determining the cost of survey to be borne by applicants, the resulting benefits to the Bureau's survey and other management programs in the area should be considered and offset against the cost to applicants.

Accordingly, the decision is reversed and the cases are remanded to the Land Office for further consideration consistent herewith.

James F. Doyle
Chief, Office of Appeals
and Hearings

DISTRIBUTION
William T. Lowe
Alice Juanita Meier
Wallace J. Harold
Floy A. Harold
Div. of L&M S&T (4)
Div. of L&M PM (2)
Div. of Engineering
Appeals List No. 1
MHS/JFD

Mining Claim Occupancy Act: Qualified Applicant 2215.0-5

An application to purchase under the Mining Claim Occupancy Act which is based upon the occupancy of the applicant's predecessor in interest is properly rejected when the evidence shows that the mining claim site was not the principal place of residence of the applicant's predecessor in interest as of October 23, 1962 or prior thereto.

Dorothy A. Taylor, Sacramento 077641 (May 10, 1965)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1965 MAY 17 AM 10 00

In reply refer to:
704
Sacramento 077641

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

May 10, 1965

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1965 MAY 17 AM 10 00

DECISION

Dorothy A. Taylor : Mining Claim Occupancy Act

Decision Affirmed

Dorothy A. Taylor, sole heir and devisee of Philip Munko, her father, has appealed from a decision of the Land Office at Sacramento, California, dated November 12, 1964, rejecting her application to purchase a tract of land 1/ under the Mining Claim Occupancy Act of October 23, 1962 (30 U.S.C. 701-709, Supp. V, 1964). The application was rejected on the basis of a report of field investigation which shows that the land sought was not a principal place of residence of Mr. Munko, the applicant's predecessor in interest, as of October 23, 1962 or prior thereto. Consequently, the Land Office held that Mrs. Taylor cannot be considered a qualified applicant under the Act.

The decision states that information obtained from individuals who were well acquainted with Mr. Munko supports the conclusion that he did not use the cabin on the subject land as a permanent residence but, to the contrary, he used it sporadically during the summer months. In addition, he allowed numerous people to use the cabin for recreational visits during the summer and hunting seasons.

Departmental regulations (43 CFR 2215.0-5) implementing the Mining Claim Occupancy Act, supra, state in pertinent part:

> "(a) The term 'qualified applicant' means (1) a residential occupant--owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962 or (2) the heirs or devisees of such a residential occupant--owner.
>
> * * * * * * * *
>
> (d) The term 'a principal place of residence' means an improved site used by a qualified applicant as one of his principal places of residence except during periods when weather and topography may make it impracticable for use. The term does not mean a site given casual or intermittent use, such as for a hunting cabin or for week-end occupancy."

1/ This land is located within the Shasta-Trinity National Forest and is a portion of NRA 1-2-3-4-5 Mining Claims. A statement of belief that the mining claims are invalid was issued on January 9, 1964.

On appeal, the appellant alleges, in substance, that her father made the cabin situated on the mining claims his principal place of residence for more than seven years preceding his death on October 23, 1962. She asserts that this can be substantiated by the grocery proprietor who furnished her father with the necessities of life, and by other oral testimony. Subsequent to her appeal, this office gave the appellant an opportunity to submit evidence in corroboration of her unsupported allegations. However, she has not submitted the evidence requested.

The appellant's assertions are contrary to the evidence contained in the record. The report of field investigation made by qualified personnel of the Forest Service, United States Department of Agriculture, substantiates the findings in the decision from which the appeal is taken. The report further shows that Philip Munko died on October 1, 1962. According to his will (filed for probate November 5, 1962), he bequeathed all of his property to Dorothy Taylor, his daughter. However, there is no mention made of the mining claims in the inventory of his estate. In Exhibit 3, contained in the field report, Mrs. Taylor states that her father used the cabin on the mining claim as a summer cabin. The Forest Service, U. S. Department of Agriculture, and the California Division of Water Resources have used this cabin for several years as a winter snow survey cabin. Exhibits 4 and 5 show that prior to the death of Mr. Munko, the Division of Water Resources spent considerable money on furnishings, repairs and maintenance of the cabin. As shown by Exhibit 6, the cabin was in a state of near collapse until needed repairs were made in 1962 to make it fit for occupancy during snow surveys.

Based upon the foregoing facts it was concluded that the appellant's father, her predecessor in interest, had not occupied the improvements on the mining claim as a principal place of residence.

The quoted regulations under the Act clearly define what constitutes a qualified applicant and a principal place of residence. It is apparent from the record that the appellant's father occupied the mining claim site sporadically during summers and allowed numerous other people to use the cabin for recreational visits during summers and hunting seasons until the cabin became unsuitable for occupancy and was repaired by a State agency for occupancy during snow surveys. In such circumstances Mr. Munko's occupancy is properly construed as "casual or intermittent;" and this, the cited regulations expressly exclude from favorable consideration. Consequently, since Mrs. Taylor succeeds to no better rights than her father had at the time of his death, her application was properly rejected.

Accordingly, the decision appealed from is affirmed.

Dorothy A. Taylor is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosure

DISTRIBUTION
Albert H. Newton, Jr., Attorney for appellant (Certified Mail)
Dorothy A. Taylor
Charles A. Connaughton, Regional Forester (2)
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
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Mining Claim Occupancy Act: Qualified Applicant 2215.0-5

An applicant under the Mining Claim Occupancy Act cannot assert that by operation of 30 U.S.C. section 38, he was in constructive possession of an unpatented mining claim prior to the date of his actual location of that claim in order to meet the residence requirement of the Mining Claim Occupancy Act.

Gerald C. Swor Sacramento 078117 (May 20, 1965)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
704
Sacramento 078117

May 20, 1965

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DECISION

Gerald C. Swor : Mining Claim Occupancy Act

Decision Affirmed

Mr. Gerald C. Swor has appealed from a decision of the Sacramento Land Office dated December 14, 1964, rejecting his application to purchase a tract of land under the Mining Claim Occupancy Act of October 23, 1962 (76 Stat. 1127; 30 U.S.C. 701-709). The stated reasons for the rejection were; (1) the land involved was not included in an unpatented mining claim for the full period of July 23, 1955, through July 23, 1962, as required by the regulations, 43 CFR 2215.0-5(a); and (2) the mining claim has not been the applicant's principal place of residence as defined by 43 CFR 2215.0-5(d).

The applicable regulation reads, in pertinent part, as follows:

> "* * * 'qualified applicant' means (1) a residential occupant-owner of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than 7 years prior to July 23, 1962 * * *." 43 CFR 2215.0-5(a).

In his statement of reasons for appeal the appellant raises two principal issues.

First, he contends that although his recorded location of the Mountain Spring House Placer Mining Claim was not made until August 6, 1956, he should be regarded as having lived on an unpatented mining claim for the entire period required by the regulations. He argues that he should be accorded the benefit of 30 U.S.C. § 38 which makes physical possession of the land as a mining claim equivalent to a valid location if the land is held for a period equal to the State statute of limitations for mining claims. He alleges that he has occupied the land as a mining claim since 1950, when it was orally conveyed to him by Tom Boney. Therefore, he asserts that for purposes of satisfying the requirements of the Mining Claim Occupancy Act, his location should be regarded as having been made prior to July 23, 1955.

Second, the appellant states that the Mountain Spring House has been his principal place of residence for approximately eight months of every year since 1950. In addition he has submitted three affidavits by persons who declare that "he and his family have lived at the Mountain Spring House, during the summer months, since 1950." The appellant further contends that the investigation of the field examiner prior to the Land Office decision was at best cursory and not designed to develop detailed and reliable data. He requests that a hearing be held at which he proposes to introduce testimony of long time residents of the area who have first hand knowledge of all the relevant facts and circumstances.

The full text of section 38 of Title 30, United States Code, relied upon by the appellant, reads as follows:

> §38. Evidence of possession and work to establish right to patent
>
> Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under sections 21-24, 26-30, 33-48, 50-52, 71-76 of this title, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of patent. R.S. § 2332.

Section 38 of Title 30, United States Code, is applicable only to cases in which patent to mining claims is being sought under specifically enumerated sections of Title 30. There is nothing from which it can be inferred that the benefits accorded by section 38 should be extended to any other provisions of the mining laws or public land laws.

The appellant is not seeking patent to his mining claim as such, rather he has applied to acquire an interest in the surface of the subject land with a reservation of the mineral interest in the United States under the provisions of the Mining Claim Occupancy Act. The terms of that Act are contained in 30 U.S.C. 701-709, and make no reference to any sections enumerated in 30 U.S.C. 38. Thus, the appellant cannot, under the Mining Claim Occupancy Act, successfully assert that by operation of 30 U.S.C. 38, he was in constructive possession of an unpatented mining claim prior to the date of his actual location of that claim.

The appellant's notice of location was recorded in Butte County, California, on September 18, 1956. The notice states that the Mountain Spring House placer mining claim was located on August 6, 1956.

A search of the records in both Butte and Plumas Counties has revealed that no mining claim upon the subject land was ever recorded prior to the appellant's location in 1956. It was disclosed, however, that the appellant recorded the Mountain Spring House claim in Plumas County on March 14, 1961, in addition to his recordation of the same claim in Butte County in 1956.

The appellant has not shown by what claim of right his predecessor, Tom Boney, occupied the cabin known as the Mountain Spring House. Nothing appears other than the appellant's statement that Tom Boney always described the cabin, orchard and miscellaneous improvements as "his mining claim." The occupancy of which the mining laws speak must be for the purpose of exploration. Occupancy for other purposes is not recognized as occupancy under the mining laws. No substantial evidence has been offered to show that, in fact, there was a mining claim on the subject land prior to August 6, 1956, when the appellant made his location.

After careful consideration of the evidence and arguments presented, we conclude that, since no mining claim existed prior to August 6, 1956, the appellant was not in possession of an unpatented mining claim for the period of July 23, 1955, through July 23, 1962, as required by the regulations. 43 CFR 2215.0-5(a) _supra_.

In view of the fact that the appellant was not in possession of an unpatented mining claim for the required period it is not necessary to consider whether, as of October 23, 1962, he was a residential occupant-owner of the improvements on the land.

The appellant has requested a hearing in this matter. Hearings are not granted as a matter of course to determine any issues involved. A hearing is considered appropriate only if there is a reasonable likelihood that it will develop facts which would be decisive of the issues involved. Cf. _Margaret A. Andrews et al._, 64 I.D. 9 (1957). In the instant case, there has been no restriction of the appellant's right to submit any evidence he deemed pertinent to his arguments on appeal. However, we feel that the present record is sufficient to properly dispose of the issue. Therefore, the request for a hearing is denied.

The decision of the Sacramento Land Office is, accordingly, affirmed.

Gerald C. Swor is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION:

Mr. Eugene H. Bramhall, Attorney for the Appellant (Certified Mail)
Mr. Gerald C. Swor
Regional Forester, Forest Service, United States Department of Agriculture,
San Francisco, California
Div. of L&M S&T (4)
Div. of L&M PM (2)
SD (California)
D&LO (Sacramento)
OPD (1)
Appeals List No. 1
AKR

appeal to Sec
affirmed A-30514
6-14-66

appeal to higher court-

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1965 JUL 6 AM 10 00

DOCKET FILES

Mining Claim Occupancy Act: Qualified applicant 2215.0-5

> An application to purchase under the Mining Claim Occupancy Act is properly rejected when the evidence of record shows that the site was used for recreational purposes, occupied sporadically since 1958 and was not a principal place of residence of the applicant as of October 23, 1962.

Coral V. Funderburg, Sacramento 079215 (June 16, 1965)

In reply refer to:
704
Sacramento 079215

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

June 16, 1965

CERTIFIED MAIL
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DECISION

Coral V. Funderburg : Application to Purchase under
: Mining Claim Occupancy Act
:

Decision Affirmed

Coral V. Funderburg has appealed from a decision of the Land Office at Sacramento, California, dated May 11, 1965, rejecting his application to purchase a tract of land 1/ under the Mining Claim Occupancy Act of October 23, 1962 (30 U.S.C. 701-709, Supp. V. 1964).

The application was rejected on the basis of a report of field investigation which shows residential occupancy of the site to be in the nature of intermittent use for recreation purposes and not a principal place of residence of the applicant as of October 23, 1962. Thus, the Land Office held that Mr. Funderburg cannot be considered a qualified applicant under the Act.

Departmental regulations (43 CFR 2215.0-5) implementing the Mining Claim Occupancy Act, supra, states in pertinent part:

> "(a) The term 'qualified applicant' means (1) a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962 or (2) the heirs or devisees of such a residential occupant-owner.
>
> * * * * * * * *
>
> "(b) The term 'a principal place of residence' means an improved site used by a qualified applicant as one of his principal places of residence except during periods when weather and topography make it impracticable for use. The term does not mean a site given casual or intermittent use, such as for a hunting cabin or for week-end occupancy."

1/ This land is located within the Sierra National Forest and is a portion of Doris No. 1 and Crystal No. 2 mining claims. The record indicates that the mining claims were determined to be invalid and the case closed on October 22, 1964.

The appellant alleges that the findings in the decision appealed from are incorrect; that the land sought was not only a principal place of residence but the principal residence of the appellant on October 23, 1962 and likewise on December 21, 1964 when he filed his application; and that the decision was issued without allowing him an opportunity to present evidence on these matters. The appellant requests a hearing in order to present oral testimony and evidence of his good faith occupancy of the land and the fact that it was his place of residence on the dates indicated.

The appellant's assertions are contrary to the evidence contained in the record. The report of field investigation made by qualified personnel of the Forest Service, United States Department of Agriculture, substantiates the findings in the decision from which the appeal is taken. The report states that improvement and prospect work on "Chrystal King" mine (located by the applicant and others) started in the early 1930's. Since then, the claim was re-located by Mr. Funderburg alone and has apparently served as a recreation use site with limited attention to prospecting attempts. Information obtained from District personnel of the Forest Service and local cattlemen also indicates that the site has been used only intermittently by the appellant or his associates for the past several years. Moreover, Mr. Funderburg stated in his application to purchase that he had not occupied the mining claims as a principal residence since 1958, but still regards them as his home and spends such time as he can there.

The quoted regulations under the Mining Claim Occupancy Act clearly define what constitutes a qualified applicant and a principal place of residence. The use of a mining claim for recreational purposes, or occupying the claim sporadically as time permits is construed as "casual or intermittent" use, and this, the cited regulations expressly exclude from favorable consideration. Furthermore, the claimant, by his own admission, ceased using the mining claims as a principal place of residence in 1958. Consequently, his application was properly rejected for the reasons stated.

In response to the appellant's request for a hearing, the Department has held that a hearing is considered appropriate only if there is a reasonable likelihood that it will develop facts which would be decisive of the issues involved. Cf. Margaret A. Andrews et al., 64 I.D. 9 (1957). In the instant case, there has been no restriction of the appellant's right to submit any evidence he deemed pertinent to his arguments on appeal. However, we believe that the present record is sufficient to properly dispose of the issue involved.

Accordingly, the decision appealed from is affirmed and the request for a hearing is denied.

Coral V. Funderburg is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosure

DISTRIBUTION:
Coral V. Funderburg (Certified Mail)
Regional Forester, Forest Service, U. S. Department of Agriculture
OPD
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Div. of L&M PM (2)
Appeals List No. 1
RLE

appeal to Sec
affirmed A-30524
4-28-66

DOCKET FILES

Mining Claim Occupancy Act: Qualified Applicants 2215.0-5

An application to purchase under the Mining Claim Occupancy Act of October 23, 1962, is properly rejected where the applicants fail to establish that they have satisfied the residence requirements of the Act.

Cora Pruett et al, Sacramento 075782 (June 25, 1965)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1965 JUL 12 AM 10 00

In reply refer to:
704
Sacramento 075782

June 25, 1965

Certified Mail
Return Receipt Requested

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

DECISION

	:	
Cora Pruett, et al.	:	Application to Purchase Under
	:	Mining Claim Occupancy Act
	:	

Decision Affirmed

Cora Pruett, Mr. and Mrs. Jack Woosley and Mr. and Mrs. Ray Wright have appealed from a decision of the Sacramento Land Office dated May 12, 1965. That decision rejected their application to purchase 5 acres of land in El Dorado County described as W$\frac{1}{2}$NE$\frac{1}{4}$NE$\frac{1}{4}$NE$\frac{1}{4}$ section 22, T. 12 N., R. 10 E., M.D.M., California, under the provisions of the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. § § 701 - 709 (Supp. V, 1964). The application was rejected because it had not been shown that the tract sought was "a principal place of residence" of any of the appellants as defined in regulation 43 CFR 2215.0-5.

In its decision the Land Office held that the use of the land as a weekend and vacation residence, as shown by the record, constituted merely casual or intermittent occupancy which does not qualify the land as a principal place of residence.

The appellants contend on appeal that all the facts regarding residency were not taken into consideration. In addition, they have submitted a statement signed by nine persons which reads: "Re mining claim residence at Garden Valley. Woosley. Wright. Pruett. I have visited there and I believe this to be a residence both prior to Oct. 1963 and after that date." The appellants have submitted no specific evidence regarding the character of their claimed occupancy of the land. They simply state on appeal that it was a "chief residence."

Section 2 of the Act of October 23, 1962, supra, provides that:

> "For the purpose of this Act a qualified applicant is a residential occupant-owner, as of the date of enactment of this Act, of valuable improvements in an unpatented mining claim which constitutes for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962."
> (emphasis added)

The Departmental regulations which are derived from and which implement the Mining Claim Occupancy Act, supra, define a principal place of residence as:

> ". . . an improved site used by a qualified applicant as one of his principal places of residence except during periods when weather and topography may make it impracticable for use. The term does not mean a site given casual or intermittent use, such as for a hunting cabin or for week-end occupancy." 43 CFR 2215.0-5(d).

A field examination conducted on November 6, 1964, revealed that the house on the subject land was in poor repair; the water pump had been disconnected, and there was little indication of occupancy of the house or use of surrounding structures. Local residents stated that, as far as they knew, no one has used the house as a residence in many years.

Further investigation revealed that for several years prior to 1961, the electric bills for the house had been sent to Mr. Woosley in Sacramento. Since 1961, the bills have been sent to Mrs. Wright also at a Sacramento address.

Several documents in the case record, which bear dates ranging from 1953 to 1964, indicate that Mrs. Pruett's address is 2015 H Streetin Sacramento. The record indicates that she was employed in Sacramento until 1960, and that she first registered as a voter in El Dorado County, where the land is located, in 1964. Mrs. Pruett has had a telephone listing in El Dorado County since 1958, but the telephone is located 1/2 mile from the subject tract in a house on land which she owns in fee simple.

Mr. and Mrs. Woosley have lived at 620 27th Street in Sacramento, since 1959. When interviewed by the Examiner they stated that they used the subject land off and on whenever they could get away.

Mr. and Mrs. Wright have resided at 1608 40th Street in Sacramento for 20 years. Mr. Wright has been employed in Sacramento for the past 14 years.

The decision of the Land Office stated that, on appeal, the appellants would have the burden of proving, by presenting positive and substantial evidence, wherein the decision was in error. The appellants' unsubstantiated assertion that the land has been a "chief" residence does not meet that burden. It is noted, in this regard, that the statement signed by nine persons in support of the appellants' position merely says that the land has been "a residence", not that it has constituted a principal place of residence. No substantial evidence has been submitted by the appellants to prove that any of them has occupied the land as a principal place of residence within the meaning of the regulations. In contrast, the record of the case contains ample evidence to corroborate the holding of the Land Office.

After careful consideration we must conclude, in the absence of evidence to the contrary, that the appellants' occupancy of the subject land has been, at best, casual and intermittent and not of such character as to fulfill the requirement of a principal place of residence as specified in the Mining Claim Occupancy Act.

The decision of the Sacramento Land Office,is, accordingly, affirmed.

Cora Pruett, Mr. and Mrs. Jack Woosley, and Mr. and Mrs. Wright are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Piccolo
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION
Mrs. Cora Pruett (Certified Mail)
Mr. and Mrs. Jack Woosley (Certified Mail)
Mr. and Mrs. Ray Wright (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD (1)
Appeals List No. 1
AKR

DOCKET FILE

Mining Claim Occupancy Act: Applications--Generally 2215

Occupancy of premises on a mining claim on alternate weekends and during vacations regularly over a long period of years is considered sufficient to constitute the premises a principal place of residence as defined in the Act of October 23, 1962, and the regulations thereunder. The right to purchase the fee simple interest in a portion of the land in the unpatented mining claim cannot be granted an applicant under the Act where it is determined that the applied for land along with other land forms a block of land, which, in the public interest, must be retained in public ownership for timber management and recreation. However, a lease may be issued to such an applicant for the applied for land, under the terms and conditions consistent with the program of the Bureau or other agency having jurisdiction over the land.

James F. McClain, Sacramento 074222 (July 7, 1965)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1965 JUL 21 PM 2 36

In reply refer to:
704
Sacramento 074222

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

July 7, 1965

Certified Mail
Return Receipt Requested

DECISION

James F. McClain : Application to purchase
: under Mining Claim
: Occupancy Act

Decision Affirmed as Modified

James F. McClain has appealed from a decision of the Land Office at Sacramento, California, dated April 15, 1965, rejecting his above-identified application filed under the Act of October 23, 1962 (79 Stat. 1127; 30 U.S.C. § 701-709 (Supp. V, 1964)), to acquire an interest in a portion of his Gravel Hill placer mining claim, situated in Lot 4 sec. 4, T. 6 N., R. 14 E., M. D. M., California. The application was rejected for the stated reason that the applicant's residential occupancy of the site each year since 1947 on alternate weekends and at least one week of vacation annually, is in the nature of casual or intermittent use and the site cannot be considered as a principal place of residence, as specified by the applicable law and regulations.

On appeal, the appellant contends, in substance, that the decision appealed from is in error in holding that he is not a "qualified applicant" residential occupant-owner as of October 23, 1962 of valuable improvements on an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962; and, the decision is in error in ignoring that Public Law 87-851 /Act of October 23, 1962, *supra*/, was passed as "remedial legislation" for the benefit of mining claimants showing honesty of purpose and good faith throughout the history of their occupancy of what they believed to have been valid mining claims for not less than seven years prior to July 23, 1962. The appellant asserts that since establishing the mining claim in 1947, 1/ he has in principal maintained two places of residence, one either at San Francisco or Sacramento, California, where he lived because of his employment and need to earn a living, and the other on the Gravel Hill mining claim, where he regularly spent weekends and part of his vacations, trying to develop the mineral values in the claim, constructing and improving a cabin on the claim, and developing a water system. The appellant concludes that this was not a casual or intermittent use of the claim for a residence,

---

1/ The record shows that the appellant with another party purchased the claim in question, it later being quitclaimed to him entirely. The claim was purchased from Howard E. and Georgia Ann Davenport on August 9, 1947. The original mining claim was located as the Hidden Channel Mine in 1931, on land, which at that time was withdrawn from mining location. The Gravel Hill Placer Mining Claim was relocated on the land after it had been restored from withdrawal in 1955.

but a regular weekend use, comparable to day-end use had the claim been closer to his work.

We agree with the appellant that his residence on the claim involved was more than just a casual or intermittent weekend occupancy. It appears from the record, and it has not been disputed, that his occupancy, at least on alternate weekends, has been regular and continuing over a period of several years. Consequently, it must be held that he is a qualified applicant under the act from this standpoint.

However, after carefully reviewing the record in this case, we conclude that it would not be in the public interest to convey fee simple interest in the applied for land because it is part of a larger block of public land which should be retained in public ownership for sustained-yield timber management and recreational purposes. The subject land is within a 200-acre timber management block, which has been under intensive forest management since before 1950. The Bureau has sold 1,224,000 bd. ft. of timber from this land, and there is approximately 2,250,000 bd. ft. of merchantable timber remaining, which has a gross national product value of an estimated $1,250,000. Detailed analysis of the land in this block indicates that it is a prime recreation as well as timber management area, and supports a good deer population and offers excellent hunting. Disposal of a small tract of land in the middle of this larger block would tend to fragment ownership, and complicate administration of the public lands in the larger block. Furthermore, a formal request has been made that all of the public domain land in this block, which adjoins the Stanislaus National Forest, be retained in public ownership until the Forest Service, United States Department of Agriculture completes a study with respect to including the lands within the Stanislaus National Forest.

In this respect Section 1 of the Act of October 23, 1962, supra, provides in pertinent part that:

> " * * * the Secretary of the Interior may convey to any occupant of an unpatented mining claim which is determined by the Secretary to be invalid an interest, up to and including a fee simple, in and to an area within the claim of not more than (a) five acres or (b) the acreage actually occupied by him, whichever is less. The Secretary may make a like conveyance to any occupant of an unpatented mining claim who, after notice from a qualified officer of the United States that the claim is believed to be invalid, relinquishes to the United States all right in and to such claim which he may have under the mining laws. * * *" (Emphasis supplied).

The authority granted to the Secretary therefore is discretionary as to whether any interest up to and including a fee simple will be conveyed to an applicant under the Act.

It is also provided in pertinent part in the applicable regulation, 43 CFR 2215.0-2, that:

> "(a) The program of the Secretary of the Interior in the administration of the Act is to grant to qualified applicants maximum tenure consistent with the public interest in the lands which they occupy. Where the public interest does not permit sale of a fee simple interest, the period of tenure granted will ordinarily not terminate until the land is needed for a public program, provided that, where paragraph (b) of § 2215.0-3 is applicable, tenure shall be consistent with the terms and conditions specified by the agency or department in aid of whose function the lands are used. * * *"

We think in this case that, while it is not in the public interest to convey a fee simple interest in the land applied for by the appellant, the appellant should be granted a lease for a term consistent with the Bureau's management program for the area in question, and upon the other terms and conditions to be specified in the lease by the Bureau's State Director for California.

Accordingly, the decision rejecting the appellant's application for a purchase of the fee simple interest in the five acres of the subject mining claim is hereby affirmed, but the decision is modified to the extent that the appellant is considered to be qualified to receive a lease to the land applied for or the acreage actually occupied by him, whichever is lesser. When this decision becomes final, the case will be remanded to the Manager through the Bureau's office of the State Director for California for further consideration consistent herewith.

James F. McClain is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is taken the appellant will have the burden of proving by presenting positive and substantial evidence wherein the decision appealed from is in error.

James F Doyle
Chief, Office of Appeals
and Hearings

Enclosures

DISTRIBUTION

Mrs. H. S. Gilmore, Agent for Appellant (Certified Mail)
Mr. James F. McClain
Hon. Harold T. (Bizz) Johnson
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD (1)
Appeals List No. 1
RBO

appeal to be dismissed A 30571 2-14-66 ③

DOCKET FILES

Mining Claims Occupancy Act: Qualified Applicant 2215.0-5

A mining claim located prior to October 23, 1962, which was null and void ab initio because at the time of location the land was withdrawn from mineral entry is not an unpatented mining claim within the meaning of the Mining Claims Occupancy Act and persons residing on such a claim are not qualified applicants under the Act.

Mining Claims: Power Site Withdrawals 3530
Mining Claims: Determination of Validity: Hearings 1852.2

Where a mining claim has been declared null and void ab initio without a hearing because it was located before the Act of August 11, 1955, 69 Stat. 681, on lands in a power site withdrawal, the claimants are not precluded from establishing that their claim is a continuation of a claim located prior to the withdrawal of the lands from mineral entry. No hearing is necessary for this purpose.

George S. and Lena E. Harrah, Sacramento 079733 (November 2, 1965)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1965 NOV 12 AM 10 00

In reply refer to:
704
Sacramento 079733

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

November 2, 1965

Certified Mail
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DECISION

George S. Harrah : Mining Claims
Lena E. Harrah : Occupancy Act

Decision Affirmed as Modified
Submission of Additional Evidence Authorized

George S. and Lena E. Harrah have appealed from a decision of the Land Office, Sacramento, California, dated August 20, 1965, which rejected their application under the Mining Claims Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. §§ 701-9 (1964), to acquire fee title to .73 acre of the Last Chance placer mining claim located in the SE$\frac{1}{4}$SW$\frac{1}{4}$ of section 8, T. 25 N., R. 9 E., M.D.B.&M., Plumas County, California. The stated reason for rejection was that four years earlier the Land Office, by a decision dated August 24, 1961, serial number Sacramento 067726, had declared the Last Chance placer claim to be null and void. When the 1961 decision became final the claim ceased to exist and, therefore, it was not an unpatented mining claim on October 23, 1962, as required by the regulations in 43 CFR 2215.0-5(a).

The case record shows that the land applied for is located within Plumas National Forest. The area was withdrawn from mineral entry on May 13, 1927, under Power Site Classification No. 179. According to the records of Plumas County, the claim was located by Odie Sweeten on July 2, 1953, and the location was recorded on July 6, 1953. There is no record of any earlier location. Odie Sweeten conveyed the purported claim to Hildor Hawkensen, who, on March 20, 1961, conveyed it to the appellants. In each instance, the conveyance was by quit claim deed.

The appellants contend that the Last Chance claim is a presently existing unpatented mining claim. In substance, they have presented the following arguments in support of their appeal:

1. The 1961 decision which declared the claim null and void ab initio was not a binding adjudication of the validity of the claim because the appellants were never notified of adverse proceedings against them and were not given an opportunity to be heard in accordance with principles of due process. Thus, the claim was still in existence on October 23, 1962.

2. The term "unpatented mining claim" as used in the Mining Claims Occupancy Act, supra, includes claims which were declared invalid prior to October 23, 1962. There is nothing in the Act itself which prohibits applications based upon such claims. The legislative history of the Act reveals that Congress

intended it to apply to persons whose mining claims were invalidated prior to October 23, 1962, as well as those who relinquished their claims or had them declared invalid after that date. Therefore, even if the 1961 decision did effectively invalidate the Last Chance claim, it did not terminate its status as an unpatented mining claim for the limited purpose of the Mining Claims Occupancy Act.

3. The location of the claim made on July 2, 1953, was actually a relocation. The claim was originally located in the 1850's, and valuable minerals were extracted from the land. Successive claimants have occupied the claim for nearly 100 years, and it has been the only residence of the appellants since they acquired it in 1961. They have expended nearly $10,000 on their home and other improvements.

4. The Mining Claims Restoration Act of August 11, 1955, 69 Stat. 681, 30 U.S.C. §§ 621 - 25 (1964), opened the subject land to mining location. It recreated the original mining claim which existed prior to May 13, 1927, when the land was withdrawn from mineral entry.

The appellants do not dispute that the land was withdrawn from mineral entry when Odie Sweeten purportedly located the claim in 1953. If the appellants cannot show that the claim was located prior to the date of the withdrawal, then we must conclude that the Land Office decision of August 24, 1961, correctly declared the Last Chance claim to be null and void ab initio.

Mining claims which are made on lands withdrawn from mineral entry are void ab initio. United States v. Clyde W. Riggle et al., A-27184 (July 11, 1955); Ted W. Fay et al., A-29781 (January 30, 1964). Prior to the passage of the Act of August 11, 1955, lands embraced in an existing power site withdrawal were not open to mining location, and a mining claim located subsequent to a withdrawal of the land for power site purposes, but prior to the passage of the Act, is null and void from its inception where the land embraced in the claim has not been restored to entry under Section 24 of the Federal Power Act at the time of location. Day Mines, Inc., A-27553 (March 28, 1958), 65 I.D. 145; Grant Green, A-29771 (September 18, 1963).

No property right is created by virtue of a mining location if the location is made on land not subject to appropriation. Since the appellants had no property right, the fact that the Land Office did not initiate formal contest proceedings against the claimants before issuing the 1961 decision was not a violation of due process. No hearing is necessary to declare mining claims null and void ab initio where the records of the Department show that at the time of location of the claims the land was not open to such location. The Dredge Corporation, A-27429 (September 23, 1957), 64 I.D. 368. The Administrative Procedure Act does not require the holding of hearings in mining cases where the facts are not in dispute and the validity of a claim presents solely the legal issue of whether at the time the location was made the land was open to mineral entry. The Dredge Corporation, A-27429 (August 14, 1958) (supplemental) 65 I.D. 336.

Section 2 of the Mining ClaimsOccupancy Act of October 23, 1962, provides that ". . . a qualified applicant is a residential occupant owner, as of the date of enactment of this act, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962." We cannot agree with the appellants' contention that their purported claim, which was void ab initio, was an unpatented mining claim on the date of the Act.

A distinction must be made between an existing mining location which is declared null and void for lack of discovery of a valuable mineral and one which is void ab initio because located on land notopen to mineral entry. The former would exist as a mining location until declared invalid in a contest proceeding while the latter, being void at its inception, would never have any legal existence.

The Last Chance placer claim which Odie Sweeten located on July 2, 1953, was void at its inception; as a matter of law it never existed. The Land Office decision of August 24, 1961, did not render the claim null and void, it merely informed the appellants that their purported claim had always been a nullity.

Since the 1953 location had no effect under the mining laws, the occupancy of the appellants and their predecessors, if based on that location, has at all times been without legal authorization. To hold that the appellants are living on an "unpatented mining claim" would distort that term beyond any legal meaning presently ascribed to it. In the absence of any express statutory authority, we must decline to adopt the broad definition which they propose.

The Land Office decision of August 20, 1965, which rejected the appellants' application under the Mining Claims Occupancy Act, and from which this appeal is taken, was incorrect in stating that because the claim had previously been declared null and void it was no longer an unpatented mining claim on the date of the Act. The reason for rejection should have been that no unpatented mining claim upon which to base an application has ever existed. To that extent the decision appealed from is hereby modified.

On appeal, the appellants allege for the first time that the Last Chance claim was originally located long before the land was withdrawn from mineral entry. Such a claim, located prior to May 13, 1927, when the area was withdrawn under Power Site Classification No. 179, would not have been affected by the withdrawal. If, however, the earlier claim was abandoned during the term of the withdrawal, it was extinguished and the new location made before August 11, 1955, when the land was opened to mining location by the Mining Claims Restoration Act, supra, would be void ab initio.

A determination that a mining claim is void from its inception because it was located after the withdrawal of the land from mineral location does not determine the validity of an alleged location made prior to the withdrawal of the land. Henry E. Covington, A-29495 (July 30, 1963). Where such a claim has been declared void ab initio without a hearing, the claimants are not precluded from establishing that the claim is simply a continuation of a claim which was located prior to the withdrawal. No hearing is necessary for this purpose. Metaline Contact Mines et al., A-29707 (December 11, 1963).

The appellants must prove that the alleged earlier claim was in fact located prior to the date of any withdrawal of the land from mineral entry, that they are the true successors in interest of the original claimants having an unbroken chain of title from them, and that the land now claimed is the same land that was located prior to the withdrawal. Cf. J. Everett Nelson, A-29174 (February 4, 1963). If these things can be satisfactorily shown, then the appellants should be allowed to amend their application to include the earlier claim.

Accordingly, the Land Office decision of August 20, 1965, is affirmed as herein modified. The appellants are allowed 60 days from the date this decision becomes final within which to submit to the Land Office, Sacramento, California, satisfactory evidence that the Last Chance Placer Claim was located prior to any withdrawal of the land from mineral entry and that the appellants are the successors to an unbroken chain of title dating from that location.

George S. and Lena E. Harrah are allowed the right to appeal from this decision to the Secretary of the Interior within thirty days from receipt thereof, in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO-1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. The appellants will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

James F. Doyle
Chief, Office of Appeals
and Hearings

Enclosures

DISTRIBUTION

Daniel F. Gallery, Attorney at Law (Certified Mail)
George S. Harrah
Lena E. Harrah
Charles A. Connaughton, Regional Forester (2)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
AKR

2-2-66

DOCKET FILES

(3)

Mining Claim Occupancy Act: Applications--Generally 2215

Occupancy of premises on an unpatented mining claim need not be construed to be the principal place of residence in order to qualify applicants for a portion of the claim under the Act of October 23, 1962. However, an application to acquire an interest in the claim under the Act must be rejected where the mining claim has not been declared invalid through proper hearing procedures, nor have the applicants filed a relinquishment of their mining claim or submitted a petition for a statement by a qualified officer of the United States as to whether or not he believes the claim to be invalid.

Herman C. and Edith O. Kampling, Sacramento 078953 **(November 2, 1965)**

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1965 NOV 12 AM 10 00

In reply refer to:
704
Sacramento 078953

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

November 2, 1965

Certified Mail
Return Receipt Requested

DECISION

Herman C. and Edith O. Kampling : Application Under Mining Claim Occupancy Act

Land Office Decision Vacated
Application Rejected on Other Grounds

Herman C. and Edith O. Kampling have appealed from a decision of the Land Office at Sacramento, California, dated April 19, 1965, rejecting their above-identified application for a certain tract of land within the Sierra National Forest pursuant to the Mining Claim Occupancy Act of October 23, 1962 (30 U.S.C. 701 *et seq.*). The stated reason for the rejection was that it was determined the appellants were not qualified applicants under the Mining Claim Occupancy Act, *supra*, inasmuch as their occupancy was deemed to be only in the nature of casual or intermittent use for vacation purposes or for summer weekends and, therefore, the site could not be considered as a principal place of residence for them as of October 23, 1962.

The record contains a report from the Forest Service of the United States Department of Agriculture, indicating that construction of the cabin now located on the site was begun in 1959 and completed in 1961; that the improvement described by the Kamplings as having been constructed beginning in 1952 and occupied in the winter of 1954-55 was apparently a tent-cabin located across the creek from the present cabin, and that residential occupancy of the site constituted use for vacation purposes on summer weekends.

In their application the Kamplings stated in this respect that a tent-house was used for residence the first two years after they located their mining claim (on July 30, 1950) but that finding this inadequate for their family, they commenced construction of a residence on the claim in 1952 and started occupancy thereof in the winter of 1954-55. They averred that the cabin is maintained in readiness for their frequent twice-weekly trips, plus holidays and summer vacations which, they stated, aggregate several months each year. Thus they asserted that, since filing on the mining claim they have in principle maintained two places of residence, one in Fresno, California, where they lived because of Mr. Kampling's employment, his need to earn a living and for the educational needs of their children, and the other on the mining claim site where they regularly spent time searching for profitable mineral deposits in the claim, in constructing and improving the cabin, rebuilding an access road thereto, and in developing a water system.

On appeal, the Kamplings assert the decision appealed from is incorrect as to the dates ascribed by the Forest Service for construction and completion of the cabin. They deny that the cabin was used only casually or intermittently for hunting and fishing or other vacation purposes, but that it was used as a principal place of residence. They reiterate that construction was begun in 1952, with occupancy starting in 1955. To substantiate these assertions the appellants submit affidavits by individuals who state that they assisted in various phases of the construction of the cabin or who visited the site at different stages of progress of the cabin construction.

Section 2 of the act of October 23, 1962, supra, defines a qualified applicant as:

> ". . . a residential occupant-owner, as of the date of the enactment of this Act, of valuable improvements in an unpatented mining claim which constitutes for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962." (Emphasis supplied).

A principal place of residence is further defined in the applicable regulation, 43 CFR 2215.0-5(d), as follows:

> "The term 'a principal place of residence' means an improved site used by a qualified applicant as one of his principal places of residence except during periods when weather and topography may make it impractical for use. The term does not mean a site given casual or intermittent residential use, such as for a hunting cabin or for week end occupancy." (Emphasis supplied).

There appears to be no question but that the language contained in section 2 of the Act and the regulation cited above denotes that premises occupied by applicants on an unpatented mining claim need not be the principal place of residence in order to qualify it for purchase under the act, but that the applicants may have more than one principal place of residence and still qualify under the act.

It is concluded from the appellants' showing that they were in possession of valuable improvements on the mining claim site for not less than seven years prior to July 23, 1962; that they were residential occupant-owners thereof as of the date of enactment of the Mining Claim Occupancy Act, supra; and their substantial use and occupancy of the cabin constitutes the premises in question as a principal place of residence as defined in the law and regulation. It appears that to this extent the appellants could be considered to be qualified applicants under the Act. James F. McClain, Sacramento 074222 (July 7, 1965). Accordingly, the decision appealed from is vacated.

However, we find that we cannot consider the application filed by the Kamplings for another reason.

Section 1 of the Act specifically provides that:

> "* * * the Secretary of the Interior may convey to any occupant of an unpatented mining claim which is determined by the Secretary to be invalid an interest, up to and including a fee simple, in and to an area within the claim of not more than (a) five acres or (b) the acreage actually occupied by him, whichever is less. The Secretary may make a like conveyance to any occupant of an unpatented mining claim who, after notice from a qualified officer of the United States that the claim is believed to be invalid, relinquishes to the United States all right in and to such claim which he may have under the mining laws. * * *" (Emphasis supplied).

This applies only to claims that have been invalidated for any reason or relinquished after the passage of the Act.

The record does not show that a relinquishment of the mining claim in question was filed or that a petition was submitted for a statement of belief by a qualified officer of the United States as to the validity of the claim. Nor does it show that there has been a determination by the Secretary of the Interior pursuant to the applicable contest procedures of the Department (43 CFR 1852) and the Administrative Procedure Act (5 U.S.C., 1958 ed., sec. 1001 et seq.), that the claim in invalid. It appears, therefore, that the Kamplings retain a right in the mining claim, and under the mining laws of the United States, have a claim to property which may not be declared invalid without proper notice and adequate hearing in accordance with the due process of law. United States v. Keith V. O'Leary et al., 63 I.D. 341 (1956); Dr. and Mrs. A. J. Kafka, A-29807 (February 3, 1964); Mrs. Marion E. Beresford, A-30015 (April 6, 1964).

Where a mining claim has never been declared invalid by the Secretary of the Interior, nor relinquished by the appellant after notification by a qualified officer of the United States that the claim is believed to be invalid, an application filed pursuant to the Mining Claim Occupancy Act is premature. Carol Kramer, Montana 062459 (SD) (June 18, 1965); Cf. Ray D. Warner, A-30271 (August 4, 1964). Accordingly, the application filed by the Kamplings must be and is hereby rejected for this reason.

Herman C. and Edith O. Kampling are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellants will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

James F. Doyle
Chief, Office of Appeals
and Hearings

Enclosures

DISTRIBUTION
Mr. and Mrs. Herman C. Kampling (Certified Mail)
Hon. B. F. Sisk, House of Representatives
Chief, Forest Service, U. S. Department of Agriculture
Regional Forester, California Region, Forest Service
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
MAG

DOCKET FILE

[illegible] Claim [illegible] Property [illegible]

[illegible] with the agent [illegible] evidence tending [illegible] qualifications to [illegible] and such [illegible] to prove [illegible] consideration.

[illegible] [illegible] January [illegible], [illegible] system compliance with the regulations. If so decided in brief the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Chief, Office of Appeals
and Hearings

Enclosure

DISTRIBUTION:
Mr. and Mrs. Norman C. Keepling (Certified Mail)
Hon. B. F. Sisk, House of Representatives
Chief, Forest Service, U. S. Department of Agriculture
Regional Forester, California Region, Forest Service
Div. of Land Mgt (4)
Div. of Land TE (2)
cc
Appeals List No. 3
AAB

DOCKET FILES

Mining Claim Occupancy Act: Generally 2215

Where an appellant submits with his appeal additional evidence tending to dispute a determination of fact concerning his qualifications to purchase a tract of land under the Mining Occupancy Act, but such evidence is not complete, the appellant will be given an opportunity to submit further evidence for consideration.

Fred W. Gimm, Riverside 05961 (January 19, 1966)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 FEB 7 AM 10 00

In reply refer to:
704
Riverside 05961

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

January 19, 1966

Certified Mail
Return Receipt Requested

DECISION

Fred W. Gimm : Mining Occupancy Act

Decision Set Aside
Case Remanded

Fred W. Gimm has appealed from a decision of the Riverside District and Land Office, dated November 16, 1965, rejecting his application under the Mining Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. § 701-709 (1964), to purchase a tract of land embraced in the Amacopa placer mining claim in sec. 8, T. 20 N., R. 7 E., S.B.M., California. The reason for the rejection was that the applicant is not qualified to obtain the benefits of the Act since he was not a residential occupant-owner of an unpatented mining claim as of October 23, 1962.

Section 2 of the Act, 76 Stat. 1127, 30 U.S.C. § 702 (1964), provides that

> "* * * a qualified applicant is a residential occupant-owner, as of the date of enactment of this Act, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962".

The decision appealed from states that the applicant acquired the Amacopa placer mining claim by a quitclaim deed dated September 1, 1964 /which is subsequent to the date of the Mining Occupancy Act/, and thus cannot be deemed a qualified applicant.

The appellant alleges that although he did not obtain the quitclaim deed until September 1, 1964, he did acquire title to the Amacopa placer mining claim and valuable improvements thereon, on or before October 23, 1962, and therefore he is a qualified applicant within the meaning of the Mining Occupancy Act, supra. To support this allegation, he submitted an affidavit by his immediate predecessors in interest, E. E. Cecil and Dena M. Cecil, stating that they sold him the Amacopa placer mining claim on October 15, 1962. Appellant also submitted a statement signed by E. E. Cecil, stating in pertinent part as follows:

> "On or about October 15, 1962, I entered into an Agreement of Sale of certain real property in the Shoshone Mining

> District, Inyo County, California, known as the Amacopa Placer Mining Claim, to FRED W. GIMM. At that time, FRED W. GIMM paid to me the sum of $2,376.00 by a Bill of Sale Draft, dated October 15, 1962, a copy of which is attached to this affidavit. A written memorandum of our Agreement was later prepared by our attorney and executed by myself and Mr. Gimm on or about December 31, 1962".

The copy of the October 15, 1962 bill of sale draft which accompanied the affidavit relates to the sale of "28 calves" for a total price of $2,376.00. It makes no reference to the sale of any mining claim. Nor has the appellant submitted a copy of the written memorandum of agreement of December 31, 1962, referred to in the affidavit.

Although the appellant's documentary evidence does not support the affidavit, nevertheless, he should be given an opportunity to establish, by probative evidence that he was the occupant-owner of the mining claim as of October 23, 1962, and that he and his predecessors in interest resided on the mining claim as a principal place of residence for not less than seven years prior to July 23, 1962.

It is also to be noted that mere possession of a mining claim for not less than 7 years prior to July 23, 1962, is not sufficient compliance with the requirements of the Mining Occupancy Act to entitle an applicant to the benefits of the Act. The applicant is required to show that he or his predecessors in interest have resided on the land as a principal place of residence for at least 7 years prior to July 23, 1962. Mrs. B. F. Rorick, A-30399 (November 16, 1965). The residence requirement is in addition to a showing of possession of the claim for 7 years prior to July 23, 1962.

Accordingly, the decision of the Riverside District and Land Office is set aside, and when this decision becomes final the case will be remanded to that office to allow the applicant a reasonable period of time within which to submit for consideration the additional evidence indicated herein.

Fred W. Gimm is allowed the right of appeal from this decision to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

James F. Doyle
Chief, Office of Appeals
and Hearings

Enclosures

DISTRIBUTION

Lonergan, Jordan & Gresham (Certified Mail)
Fred W. Gimm
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD (1)
Appeals List No. 1
MHS

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1966 FEB 7 AM 10 00

appeal to Sec
affirmed A-30592 9-26-66

DOCKET FILES

Mining Claim Occupancy Act: Applications -- Generally 2215

A cabin which is used for vacations and other leisure periods, even though used at frequent intervals during most of the year, does not constitute "a principal place of residence" within the meaning of section 2 of the Act of October 23, 1962, and an application for the conveyance of land based upon such use is properly rejected.

Herman C. and Edith O. Kampling, Sacramento 078953 (January 25, 1966)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 FEB 9 AM 10 00 (3)

In reply refer to:
704
Sacramento 078953

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

January 25, 1966

Certified Mail
Return Receipt Requested

DECISION

Herman C. Kampling	:	Mining Claim Occupancy Act
Edith O. Kampling	:	

Decision of November 2, 1965, Vacated
Land Office Decision Affirmed

On November 2, 1965, the Office of Appeals and Hearings issued a decision involving the appeal of Herman C. and Edith O. Kampling. Mr. and Mrs. Kampling appealed from a decision of the Land Office at Sacramento, California, dated April 19, 1965, which rejected their application to acquire land under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. §§ 701-709 (1964). The Land Office decision stated that rejection of the application was required because the Kampling's occupancy of their mining claim was of such a casual or intermittent nature that the site could not be regarded as a principal place of residence. The November 2 decision of the Office of Appeals and Hearings vacated the Land Office decision and instead rejected the application because the mining claim had not been relinquished or declared invalid as is required before an application to acquire a site under the Mining Claim Occupancy Act can be allowed.

The Kamplings have since submitted a relinquishment of the claim. Accordingly, their application to acquire land under the Mining Claim Occupancy Act can now be reconsidered on its merits.

On appeal, the Kamplings have submitted the notarized statements of five persons. These statements corroborate the Kamplings' assertion that they have resided on their mining claim since it was first located in 1950; that they lived in a tent-house until the winter of 1954 when they moved into their partially completed cabin; and that the cabin was completed in 1959. They further assert that the cabin has not been merely a vacation residence, but rather it has been their principal place of residence while they worked their mining claim and has also served as a safe storage place for equipment.

The record shows that Mr. and Mrs. Kampling maintain a home in Fresno, California, where Mr. Kampling is employed and the children attend school. The family has resided on the mining claim during summer vacations and holidays. They have also made frequent trips there during the remainder of the year.

In a recent decision, the Department of the Interior held that a cabin which is used only intermittently for vacations and other leisure periods, even though used at frequent intervals during most of the year, does not constitute a principal place of residence within the meaning of section 2 of the Mining Claim Occupancy Act. An application based upon such use must, therefore, be rejected. H. T. Crandell, A-30373 (October 26, 1965), 72 I.D. 431.

Although the Department issued the Crandell decision prior to our decision of November 2, this office was not aware of it until after our own decision had been placed in the mail. The Department's decision is binding upon the Bureau of Land Management and, in reconsidering Mr. and Mrs. Kamplings' appeal, this office must follow the Department's interpretation of the requirements of the Mining Claim Occupancy Act.

The Crandell decision discusses in detail the history of the "principal place of residence" requirement of the Mining Claim Occupancy Act:

> "Section 2 of the Act of October 23, 1962, supra, provides that:
>
> > 'For the purposes of this Act a qualified applicant is a residential occupant-owner, as of the date of enactment of this Act /October 23, 1962/, of valuable improvements in an unpatented mining claim which constitutes for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962.'
>
> "The statute is not explicit in defining 'a principal place of residence.' Nevertheless, without attempting to determine what amount of time must be spent at a place for it to constitute a principal place of residence or how many principal places of residence a person may have under the act, it may be reasonably established from the legislative history of the act what does not constitute a 'principal place of residence' within the statutory meaning.

* * * * *

> "The legislative history strongly indicates that 'a principal place of residence' must be in the nature of a home which the occupant leaves periodically only because adverse weather conditions or some similar circumstance makes it impossible or impracticable for him to live there on a year-round basis. But however that may be, it seems clearly to exclude a place to which a person repairs only on weekends and during vacations, while maintaining a regular home elsewhere. This accords with the purpose of the legislation. As the Senate Committee said:
>
> > 'This bill is a relief measure designed to aid those qualified people on whom a hardship would be visited were they required to move from their long established homes.' S. Rep. No. 1984, *supra*, 3" 72 I.D. 433, 434, 435 (1965).

After careful consideration of the record on appeal, we must conclude that Mr. and Mrs. Kamplings' occupancy has not been sufficient to make their mining claim a principal place of residence as required by the Mining Claim Occupancy Act. The language in our decision of November 2 implying that their application should be accepted is in error.

Accordingly, the decision of the Office of Appeals and Hearings, dated November 2, 1965, is hereby vacated and the decision of the Land Office, Sacramento, California, dated April 19, 1965, is affirmed.

Herman C. and Edith O. Kampling are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations. The appellant will have the burden of proving by presenting positive and substantial evidence wherein this decision is in error.

James F

Chief, Office of Appeals
and Hearings

Enclosures

DISTRIBUTION

Mr. and Mrs. Herman C. Kampling (Certified Mail)
Hon. B. F. Sisk, House of Representatives
Chief, Forest Service, U. S. Department of Agriculture
Regional Forester, California Region, Forest Service
Regional Attorney, U. S. Department of Agriculture
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
AKR

DOCKET FILES

Mining Claim Occupancy Act: Qualified Applicants 2215.0-5

The Act of October 23, 1962 does not apply to occupants of mining claims which were invalidated prior to the date of enactment of the act.

James F. Smith, **Sacramento 078758** (February 24, 1966)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 MAR 7 PM 2 28

In reply refer to:
704
Sacramento 078758

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

February 24, 1966

Certified Mail
Return Receipt Requested

DECISION

James F. Smith : Mining Occupancy Act

Decision Affirmed

James F. Smith has appealed from a decision of the Sacramento Land Office, dated December 27, 1965, rejecting his application under the Mining Occupancy Act of October 23, 1962, (76 Stat. 1127; 30 U.S.C. 701-709) to purchase a tract of land included in the former Last Hoap Mining Claim. The application was rejected for the reason that the Mining Occupancy Act, supra, does not apply to mining claims which were invalidated prior to the date of the enactment of the Act. The decision cited the case of Grady L. Johnson et al., 72 I.D. 476 (1965) in support of its position.

The record shows that by decision of March 10, 1960, the subject mining claim was declared null and void in Contest No. 5659. No appeal was taken from that decision, and the contest case was closed on April 22, 1960.

The appellant does not deny that his mining claim was invalidated prior to the enactment of the Act of October 23, 1962, but apparently he does not understand why he can be declared ineligible for relief under the Act. The appellant's signed postscript to the copy of his statement of reasons for appeal states, however, that:

> "I also realize I am not going to be able to buy the claim, what I am fighting now is to just occupy claim under a lease agreement. . . ."

A report of field examination, dated July 20, 1965, states that Mr. Wmith was at that time building a cabin on the mining claim, and that improvements previously constructed on the claim consist of a house-trailer on blocks and a concrete-block washroom-shower. The report also shows that the mining claim was not used as a principal place of residence by Mr. Smith or his predecessor, between July 23, 1955 and October 23, 1962.

The Department, in ruling that the Mining Occupancy Act does not apply to occupants of mining claims which were invalidated prior to the date of the enactment of the Act, stated in the Johnson decision, supra, in pertinent part:

> ". . . This conclusion accords with the familiar rule of statutory construction that legislation will not be construed to operate retrospectively unless the legislative intent to that effect is clearly expressed. . . .
>
> "There is no such expression of legislative intent in this case. . . ."

Accordingly, no relief can be accorded Mr. Smith under the Act and the decision is affirmed.

It is suggested that Mr. Smith contact the Sacramento Land Office for information as to any appropriate public land law, other than the Mining Occupancy Act, under which he may file, for consideration, an application to occupy the land containing his improvements.

James F. Smith is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

James F. Doyle
Chief, Office of Appeals
and Hearings

Enclosures

DISTRIBUTION
James F. Smith (Certified Mail)
Hon. Thomas H. Kuchel, U. S. Senate
Hon. John E. Moss, House of Representatives
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OPD (1)
Appeals List No. 1
MHS

DOCKET FILES

Mining Claim Occupancy Act 2215.2

An application under the Mining Claim Occupancy Act is properly rejected where the improvements on the land had not been completed and made habitable for not less than seven years prior to July 23, 1962, and the applicant did not reside on the land for at least seven years prior to July 23, 1962.

Mildred E. Hatcher, Sacramento 079456 (April 28, 1966)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 MAY 12 AM 10 00

In reply refer to:
704
Sacramento 079456

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

April 28, 1966

Certified Mail
Return Receipt Requested

DECISION

Mildred E. Hatcher : Mining Claim Occupancy Act

Affirmed as Modified

Mildred E. Hatcher has appealed from a decision of the Land Office, Sacramento, California, dated February 23, 1966, rejecting her application under the Mining Claim Occupancy Act, 76 Stat. 1127, 30 U.S.C. §§ 701-709 (1964), to purchase approximately five acres of land embraced in her former unpatented Boar's Nest mining claim.

The decision held that Mrs. Hatcher is not qualified to obtain relief under the Mining Claim Occupancy Act because she had not met the improvement and principal place of residence requirements of the regulations under the Act as contained in 43 CFR 2215.0-5(a) and (d). This conclusion was based upon the findings of a report of field investigation which showed that the improvements on the land sought had not been in existence for at least seven years prior to July 23, 1962, and the site did not constitute a principal place of residence for her as of October 23, 1962.

The appellant alleges that she and her husband started the construction of improvements on the land in 1953, and began residing thereon in 1962 for the purpose of developing it as a second home. She states that her husband became ill and died in 1963, and that the cabin on the land has great sentimental value to her.

The appellant does not dispute the finding that the cabin which was started in 1953, was not completed and made habitable until late in 1957. This alone is a sufficient reason for rejecting her application.

Moreover, the claimant not only had to comply with the improvement and principal place of residence requirements of the Act, but she must also have resided on the land for at least 7 years prior to July 23, 1962.

Section 2 of the Act, 76 Stat. 1127, 30 U.S.C. § 702 (1964), provides that:

> "* * * a qualified applicant is a residential occupant-owner, as of the date of enactment of this Act, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962".

This residence requirement of the law recently received detailed consideration by the Department in its decision Mrs. B. F. Rorick, A-30399 (November 16, 1965). The Department stated in that decision that one of the principal questions in the case was whether the appellant had occupied the premises for at least 7 years prior to July 23, 1962. The Department then ruled that the application for the conveyance of the land was properly rejected where it appeared that the applicant or his predecessor in interest did not reside on the land for at least 7 years prior to July 23, 1962.

Consequently, since the appellant admits in her statement of reasons for appeal that she had not begun residence on the claim until 1962, she could not have complied with the mandatory 7-year residence requirement. This too is a sufficient reason for rejecting her application.

In view of these findings, it is not necessary to consider whether the cabin on the mining claim had actually constituted a principal place of residence for the appellant.

Accordingly, the decision is affirmed as herein modified.

Mildred E. Hatcher is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

James

Chief, Office of Appeals
and Hearings

Enclosures

DISTRIBUTION
Mildred E. Hatcher (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M FM (2)
OPD (1)
Appeals List No. 1
MHS

DOCKET FILES

Mining Claim Occupancy Act: Qualified Applicants 2215.0-5

Where an application is filed under the Mining Claim Occupancy Act to purchase a tract of land embraced in an unpatented mining claim, and the record shows that the applicant resided on the mining claim with her parents for approximately 15 years prior to January 1961, when she moved from the claim in order to be near her place of employment but she continued to repair and otherwise look after her home on the claim, she is deemed to be a residential occupant-owner of the improvements on the claim as a principal place of residence within the meaning of the Act.

Mary Hamilton Reynolds, Sacramento 079073 (August 24, 1966)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
704
Sacramento 079073

August 24, 1966

DECISION

Mary Hamilton Reynolds : Mining Claim Occupancy Act

Decision Reversed
Case Remanded

Mary Hamilton Reynolds has appealed from a decision of the Sacramento Land Office dated February 28, 1966, rejecting her application filed pursuant to the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. §§ 701-709 (1964), to purchase a tract of land embraced in the unpatented Daisy Placer Mining Claim, located in the Plumas National Forest, California.

The application was rejected for the reason that Mrs. Reynolds was not a qualified applicant because she

> "* * * has not used the house as a principal place of residence since she discontinued its use as her home in 1961 and moved to Yuba City. It was not a principal place of residence for her on October 23, 1962, nor is it such at present."

This determination was based upon reports of field examination submitted by the Forest Service, United States Department of Agriculture.

The Land Office decision and the field reports on which it was based suggest, in part, that the mining claim was not a principal place of residence for the appellant *after* October 23, 1962. The Department, in the case of *Ola N. McCullough Sibley*, 73 I.D. 53 (1966), disposed of this issue in the following language:

> "In determining the qualifications of an applicant under the act, the Department has held that the determination must be made upon the basis of facts that existed on or before October 23, 1962. Occupancy of a mining claim after that date, or the intent to occupy it after that date, is of no consequence in determining an applicant's qualifications. *H. T. Crandell*, 72 I.D. 431 (1965); *Joseph W. Hinton et al.*, A-30374 (November 17, 1965). It follows, then, that a qualified applicant as of October 23, 1962, does not become disqualified by virtue of his failure to continue to occupy a claim after that date. * * *"

The appellant's statement of reasons for appeal, her application to purchase, her correspondence with the Land Office and with the Forest Service, United States Department of Agriculture, and her letter in case file Sacramento 074936, show that her parents, James and Elizabeth Hamilton, had commenced residence on the claim in 1945. Thereafter, the appellant and her parents maintained a permanent year-round residence on the claim until 1954, when the appellant's father died. The appellant and her mother continued to make their home on the claim until 1960, when the appellant's mother died. During this period, when she was living with her mother, she worked in a nearby town, in order to earn a livelihood, and she came home on weekends. The appellant inherited the claim, the family home and the other improvements on the land after her mother's death. The appellant married Billy Reynolds in 1961, shortly after her mother's death, and she thereafter resided in rented quarters near the places where she and her husband were gainfully employed. From January 1961 until December 1963, all of the family belongings were left in her house on the claim and her sister-in-law lived there as the caretaker. During this same period the appellant stayed in the house on the claim on some weekends, whenever circumstances permitted, and she also kept up the repairs on the home and the other buildings on the claim.

It is not disputed that the improvements on the claim meet the requirements of the act and that the claim constituted, for the appellant and her predecessors-in-interest the principal place of residence from 1945 until 1961. The issue to be resolved here, then, is whether the appellant had, during the period from January 1961 until October 23, 1962, so conducted her affairs, that her home on the mining claim ceased to be a principal place of residence for her on or before October 23, 1962.

The Department recognizes, in its decision in the Sibley case, supra, that:

> "* * * there may be no absolute standards as to what constitutes a principal place of residence for a person as of the critical date, /October 23, 1962/ but the facts of each case must be scrutinized to determine whether the purposes, as well as the specific requirements, of the statute have been satisfied."

The Department also noted in the Sibley case that:

> "* * * the Senate Committee indicated that physical presence was in some circumstances not required on that date, /October 23, 1962/ the language of the act seems to negate the acceptability of occupancy at that time by someone other than the claimant. * * *"

The Department also considered as significant a statement by the Senate Committee on Interior and Insular affairs regarding an earlier version of section 2 of the Mining Claim Occupancy Act, namely:

> "Section 2 defines a qualified applicant. * * * He must be a residential occupant-owner as of July 23, 1962. This does not mean in actual physical residence on that date but rather that the residence must have been habitable and, * * * used during the preceding 7 years in a manner consistent with the purposes intended to be covered by the act." (Underlines added).

The Department ruled, in the Sibley case, that:

> "Without attempting to prescribe what facts would require a finding that a claimant had ceased to occupy a mining claim once used as a principal place of residence and had begun to use it for other purposes, it seems wholly consistent with the purposes of the statute to find that a temporary disruption in the period of occupancy, caused by illness or some equally cogent reason which, for practical purposes, forces the claimant to live elsewhere for a time, does not necessarily disqualify that claimant from the benefits of the act. Moreover, the fact that during such absence the claimant may have rented the property to another does not in itself, require a finding that the claimant had ceased to use it as a principal place of residence.
>
> "It is a common practice for the owner of a house, who for one reason or another temporarily moves to another locality, to rent his house during his absence without any intention of abandoning it as his principal or permanent place of residence. Such rental is generally occasioned by sheer economic necessity rather than by a desire on the part of the owner to convert the house from his personal residence to commercial rental property. * * *
>
> x x x x x
>
> "Some of the factors that are of relevance in making the determination are length of occupancy by the claimant and his predecessors in interest, i.e., whether there has been, at best, occupancy for the bare minimum period required or whether the claimant made the mining claim his home for many years before the required period; suitability of the improvements constructed for permanent year-round residence; reasons for absence from the mining claim residence during the required

> period of occupancy, i.e., voluntary or involuntary; and evidence tending either to show that the claimant intended, during the period of absence, to resume residence on the mining claim when it became possible or to show that he took up residence elsewhere during the 7-year period with no intent to return to the mining claim again on a regular residential basis.
>
> x x x x x
>
> "Viewing the evidence as a whole under the criteria set forth above, I am unable to conclude that on October 23, 1962, the mining claim in question was not a principal place of residence for the appellant. Nor do I believe that the appellant's break in her occupancy of the claim, in the circumstances described, destroyed her necessary possession of the claim for the period required. Rather, I think, a reasonable appraisal of the evidence warrants a finding that the appellant is a qualified applicant within the meaning of the act."

The Sibley decision was based in substantial part on the following facts: That the appellant in that case had resided on her claim for at least 20 years prior to August 31, 1960; substantial improvements, suitable as a permanent place of residence were constructed on the claim; from October 1960 until September 1962 the appellant's house was rented to various parties, except during brief intervals between tenants; during the same period the appellant reserved one room of the house for the storage of her personal belongings and during the tenure of her first tenants, from October 1960 through May 1961, she had also reserved a room to be used as she pleased and she stayed in the house on several occasions; the last tenants during the same period lived on the claim until September 19, 1962 and terminated electric service on September 25, 1962; and electric power service was restored on October 19, 1962 in the name of the appellant and was not terminated by her until October 23, 1963. The decision in the Sibley case also shows that the appellant had moved off the claim after her first husband had died because she was suffering from a physical disability and could not live alone and when she again moved onto the claim she had already remarried.

There are several striking similarities between the facts in the case under consideration and the facts in the Sibley case. There are also two notable factual differences between these two cases: one, Mrs. Sibley had physically moved back on her claim 5 days prior to the date of the act, while Mrs. Reynolds had not physically moved back on the claim prior to the critical date of October 23, 1962, and two, Mrs. Sibley had rented her house to others from October 1960 until September 25, 1962 while Mrs. Reynolds had not rented her home to anyone but she kept her sister-in-law on the premises as a caretaker.

The facts in the Sibley case, translated into a finding of law, holds that although Mrs. Sibley had moved back on her claim only shortly before October 23, 1962 and although other persons had rented and occupied her house on the claim for approximately two years prior thereto, the other facts in her case, such as long permanent residence and the continued active interest in the claim thereafter, were deemed to be sufficient, viewing the evidence as a whole, to warrant a ruling in her favor. Applying the same reasoning to this case, although Mrs. Reynolds was not physically residing on her claim on the critical date, there was no break in her occupancy as a matter of law because the person who lived on her mining claim after January 1961 was merely Mrs. Reynolds' caretaker and not in legal contemplation the occupant of the premises. Consequently, viewing the evidence as a whole in the light of the criteria established in Sibley, supra, there is no basis for concluding that on October 23, 1962, the mining claim was not a principal place of residence for the appellant. Nor, under the circumstances of this case did physical absence from the claim on the critical date destroy her necessary possession of the claim for the required period. Rather, a reasonable appraisal of the evidence warrants a finding that the appellant is an occupant-owner who is a "qualified applicant" within the meaning of the act.

Accordingly, the Land Office decision is reversed and the case is remanded for further processing.

John B. Piccolo

Acting Chief, Office of Appeals and Hearings

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1 copy file

Mining Claims Occupancy Act: Application 2215.2

An application under the Mining Claims Occupancy Act is properly rejected where the applicants did not maintain a principal place of residence on their claim for at least seven years prior to July 23, 1962.

Hearing Procedures: Generally 1850

A request for a hearing will be denied where the claimants fail to allege facts which, if proven, would entitle them to the relief they seek.

Millie Jannelli, John and Margaret Montevecchi, Sacramento 079765
(November 22, 1966)

DEPT. OF INTERIOR
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SACRAMENTO LAND OFFICE
1966 DEC 29 PM 2 58

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
704
Sacramento 079765

November 22, 1966

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DECISION

Millie Jannelli, : Mining Occupancy Claim
John and Margaret Montevecchi :

Decision Affirmed

The above named persons have appealed from a decision of the Sacramento Land Office, dated July 22, 1966, rejecting their application filed pursuant to the Mining Claims Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. § 701-709 (1964), to purchase a tract of land formerly included in their unpatented Eldorado Placer Mining Claim and Eldorado No. 2 Placer Mining Claim, located in sec. 11, T. 6 S., R. 21 E., M.D.M., California. This land is within the Sierra National Forest.

The application was rejected for the stated reason that the subject mining claims did not constitute for the applicants a principal place of residence on October 23, 1962, as required by the Act.

The appellants request a hearing and allege that:

1. They were never given an opportunity to know what evidence was used against them.

2. The Forest Service made no adequate examination of the circumstances of the occupancy by the applicants and their predecessors in interest.

The appellants' application to purchase, filed on August 4, 1965, states that Millie and Peter Jannelli purchased the Eldorado Placer Mining Claim on November 13, 1951, by quitclaim deed, and they purchased the Eldorado No. 2 Placer Mining Claim on March 9, 1952 by quitclaim deed. The application also states that the Jannellis had commenced the construction of a two bedroom house in the Spring of 1955, and it was completed in 1957. The Jannellis assert that they occupied the property and the improvements from July 23, 1955 until August 2, 1960, when they sold their mining claims by a conditional sale contract to the Montevecchis, who thereafter owned the property and used it as one of their principal places of residence through October 23, 1962.

A letter from Mrs. Montevecchi received by the Forest Service on May 23, 1964, states that after purchasing the place

> "x x x a series of tragedies came upon us which prevented us to live there full time. x x x"

In a letter dated May 16, 1966, addressed to the Bureau's Land Office, Sacramento, California, the Assistant Regional Forester, Forest Service, United States Department of Agriculture, San Francisco, California, concluded that the applicants are not qualified for relief under the Mining Claims Occupancy Act, supra. This conclusion is based upon the separate signed statements which were made by four employees of the Forest Service. The statement of one employee, dated September 11, 1965, covers the period from July 1953 through October 1961, when he was on his usual bi-weekly fire season patrol. He observed the following:

> "Improvements
>
> Road, Cabin and out-shed since August 1961
> Road, 3 shacks only, from 1953 to 1961
>
> "Occupant(s)
>
> "None ever observed or contacted.
> Signs on buildings indicated names appearing to be "Montevecchi and 'Janet'"

This statement also contains the following:

> "x x x During the aforesaid period, it was personally known to me that these persons were using the improvements
>
> Only for casual and intermittant use primarily on weekends: "

The statement of another employee, dated December 9, 1965, covered the periods from January 1, 1958 to June 11, 1961 when he was the District Ranger, and the period from June 11, 1961 to December 8, 1963, when he was the Recreation and Lands Staff Officer. This statement contains the following:

> "I visited several of these /‾mining_7 claims, including Montevecchis at least two to three times a year while District Ranger and at least once per year while serving as Staff Officer. These visits were made during all seasons of the year. On no occasion did I find anyone present on the Montevecchi claim during these visits although it appeared, from the condition of the cabin and the access road, that some periodic or occasional use was being made of the cabin on the claim. On no occasion did I notice any evidence of mining activity."

The statement of another employee, dated December 16, 1965, covered the period from July 1960, to 1965, while he was employed as a Fire Control Officer. This statement contains the following:

> "During the aforementioned period, I noted, on occasions, signs of use on the access road leading to the claim. x x x I visited several of these claims, including Montevecchis claim at least two or three times a year. These visits were made during all seasons of the year. On no occasion did I find anyone present on the subject claim during these visits. x x x"

The statement of another employee, dated December 15, 1965, covered the period from June 1961 to 1965, while he was employed as the District Ranger. This statement contains the following:

> "I visited several of these claims, including the Montevecchis at least three times a year while District Ranger. These visits were made during all seasons of the year. During these visits, I found no one present on the subject claim. It appeared, however, from the condition of the cabin and the access road, that some periodic or occasional use was being made of the cabin on the claim. On no occasion did I observe any evidence of mining activity."

There is no substantial probative evidence in the case record that disputes the statements made by the Forest Service personnel as to the applicants' residence for the period from July 23, 1955 to July 23, 1962.

Section 2 of the Act, 76 Stat. 1127, 30 U.S.C. § 702 (1964), provides that:

> "* * * a qualified applicant is a residential occupant-owner, as of the date of enactment of this Act, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962".

The term "a principal place of residence" means an improved site used by the applicant or his predecessors in interest as one of his principal places of residence for at least 7 years prior to July 23, 1962. Mrs. B. F. Rorick, A-30399 (November 16, 1965). The intent or the desire of the claimant to make a claim site a permanent home, no matter how strong or sincere, cannot be considered as decisive in determining qualifications under the Mining Claims Occupancy Act unless such intent is coupled with a showing by the applicants' use that, on the critical date, it was, in fact a principal place of residence for them. Carol V. Funderburg, A-30514 (June 14, 1966). As the

Department pointed out in Jack A. Walker, A-30492 (April 28, 1966), the purpose of the law is to preserve homes for qualified occupants of mining claims, places where they have lived for years and from which their forced removal, because of the invalidity of the mining claims, would be a real hardship. There was no solicitude expressed by the Congress for the person who has a home elsewhere and who merely occupied the mining claim on a limited basis or for a limited purpose. Such a person would not be uprooted from a home if denied the right to occupy the claim.

The appellants have not alleged any facts which, if proven, would entitle them to the relief which they seek. Therefore, the request for a hearing is denied. Jack A. Walker, supra, Carol V. Funderburg, supra.

Accordingly, the decision is affirmed.

Millie Jannelli and John and Margaret Montevecchi are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

John B. Ticcolo

Acting Chief, Office of Appeals and Hearings

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Mining Claims Occupancy Act: [illegible]

Where a patent which is to be issued pursuant to the provisions of the Mining Claims Occupancy Act of October 23, 1962, will provide for automatic reversion thereof and for the removal of the patentee's improvements from the land upon a declaration that retention of the land is required for Federal reclamation purposes, the patentee can not require the Government, as a condition of reversion, to agree to pay him for the value of any of these improvements.

[illegible]

Department pointed out in [illegible], A-[illegible] ([illegible], 1966), the purpose of the law is to preserve homes for qualified occupants of mining claims, in homes where they have lived for years and whose forced removal, because of the invalidity of the mining claims, would be a real hardship. There was no solicitude expressed by the Congress for the person who has a home elsewhere and who merely occupied the mining claim on a limited basis or for a limited purpose. Such a person would not be uprooted from a home if denied the right to occupy the claim.

The appellants have not alleged any facts which, if proven, would entitle them to the relief which they seek. Therefore, the request for a hearing is denied. [illegible], supra; [illegible], supra.

Accordingly, the decision is affirmed.

Willie Jarrell and John and Margaret [illegible] are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. (See enclosed Form [illegible] and Circular [illegible].) If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $[illegible]. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of showing, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

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[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

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Mining Claim Occupancy Act: Generally 2215

> Where a patent which is to be issued pursuant to the provisions of the Mining Claim Occupancy Act of October 23, 1962, will provide for automatic termination thereof and for the removal of the patentee's improvements from the land upon a declaration that possession of the land is required for Federal reclamation purposes, the patentee can not require the Government, as a condition of termination, to agree to pay him for the value of any of those improvements.

Robert E. Starrs, Sacramento 076218 (May 11, 1967)

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In reply refer to:
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UNITED STATES
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Bureau of Land Management
Washington D.C. 20240

May 11, 1967

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DECISION

Robert E. Starrs : Mining Claim Occupancy
:

Decision Affirmed

Robert E. Starrs has appealed from that part of a decision of the Sacramento Land Office, dated November 28, 1966, which provides for certain limitations in a conveyance to him by the Government under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. § 701-709. The land involved contains .55 acre. It is located in the Trinity National Forest, and is within an area that may be inundated by the Bureau of Reclamation's Eltapom Reservoir which is tentatively planned for construction. The limitations to which the appellant objects are stated in the decision as follows:

> "This conveyance is made upon the limitation that in the event ownership and possession of all or any part of the land are required for Federal reclamation purposes, upon declaration by the United States of such requirement the estate in the land hereby conveyed shall automatically terminate and title to and the right to re-enter, occupy and use the same shall revert to the United States. No claim or right to compensation shall accrue as a result of such termination and reversion, or due to re-entry, occupancy and use of the land by or under authority of the United States, or because of loss of or injury or damage to any buildings, structures, crops or improvements thereon. The grantee herein, his transferees, successors and assigns, covenant and agree, following such declaration and within 120 days after notice from the United States, to vacate said land and remove or cause to be removed any buildings, structures or improvements thereon without expense to the United States."

The appellant alleges, in pertinent part:

> 1. "The decision . . . would deprive me of any claim or right to compensation for land, buildings, or improvements lost or damaged by, or under the authority of the United States Govt. or agenices."
>
> 2. ". . . On January 27, 1965 the U.S. Forest Service recommended granting fee simple, subject to a reservation for reservior purposes. The reservation was to be, that if the land was needed for reservior purposes I would release the land for the same amount of money I had purchased it and that I would be compensated for all buildings and improvements damaged or destroyed by or

under the authority of the U.S. Government. I agreed that this was a just decision . . . ."

3. " In the letter of Oct. 1, 1965, written by . . . State Director, Bureau of Land Management, to . . . Regional Forester, U.S.F.S., Calif. Region, the wording of the condition to be incorporated in the patent is as follows.

> This patent is subject to a reservation of the right of the United States Government or its permittees or licenses to enter upon, occupy and use any part or all of said lands necessary for reservoir purposes and no claim or right to compensation shall accue from the occupation or use of any part or all of these lands for said purposes. The United States or any licensee for any part or all of these lands may enter thereupon for reservoir construction, operation and maintance upon payment of any damages to improvements caused thereby to the owner thereof, etc."

4. "The intent of the law, as witnessed by the House and Senate hearings, was to be one of relief. "A relief measure designed to aid those qualified people on whom a hardship would be visited were they required to move from their long established homes." (Senate Report No. 1984 Aug. 30, 1962)".

5. "Under the condition set forth in . . . the offer to purchase lands unde (sic) hardship would result. I could and would lose everything my family and I have worked for. In brief I'm asked to pay $640 for the opportunity to lose everything. This is not consistent with the intent of the Law. . . ."

The United States Supreme Court has ruled that in the absence of statutes giving recognition to the rights of persons who are in possession of public lands, no rights can be acquired against the United States by the mere occupancy and the making of improvements on public lands. Sparks v. Pierce, 115 U.S. 408 (1885). Moreover, the Department has consistently held that reliance upon information and advise from a Bureau employee will not confer any right or interest in public land that is not provided for by law. Oscar C. Collins, Standard Oil Company of California, 70 I.D. 359 (1963). Consequently, the appellant's rights, if any, must be ascertained from the provisions of the law, *supra*, and from the departmental regulations thereunder.

The Mining Claim Occupancy Act provides, in pertinent part, that:

> ". . . the Secretary of the Interior may convey to any occupant of an unpatented mining claim which is

> determined by the Secretary to be invalid an interest, up to and including a fee simple, in and to an area within the claim. . . .
>
> * * * * *
>
> "Sec. 3. Where the lands for which application is made . . . have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, . . . the Secretary of the Interior may convey an interest therein only with the consent of the head of the governmental unit concerned and under such terms and conditions as said head may deem necessary.
>
> "Sec. 4. (a) . . . . .
>
> "(b) Any conveyance of less than a fee under this act shall include provision for removal from the tract of any improvements or other property of the applicant at the close of the period for which the conveyance is made, ...
>
> "Sec. 6 (a) The execution of a conveyance as authorized by section 1 of this Act shall not relieve any occupant of the land conveyed of any liability, existing on the date of said conveyance, to the United States for unauthorized use of the land in and to which an interest is conveyed.
>
> * * * * *

Departmental regulation 43 CFR 2215.0-2(a) provides that:

> ". . . Where the public interest does not permit sale of a fee simple interest, the period of tenure granted will ordinarily not terminate until the land is needed for a public program, provided that, where paragraph (b) of § 2215.0-3 is applicable, tenure shall also be consistent with the terms and conditions specified by the agency or department in aid of whose functions the lands are used. . . ."

The record shows that the appellant had purchased the mining claim and the improvements thereon from his predecessor in interest in 1956 for the sum of $8,500 and that he had constructed additional improvements on the site thereafter. A valuation report, which is in the case file, states that the Eltapom reservoir will be built about 1980, thus giving Starrs an occupancy of approximately 14 years. The present worth of the tract for a 14-year period, which started in 1966, was set at $340 net, after deducting the allowance for Starr's equity. To this sum was added a $300 survey cost.

This explains the $640 sum referred to above and which the appellant appears to have accepted.

The appellant is, in effect, insisting that his payment of $640 should entitle him to be paid the sum of $8,500 or more by the United States Government, in the event he is ordered to remove his improvements from the land when it is needed for Federal reclamation purposes.

The law expressly states, that it affects "invalid" mining claims only (Sec. 1), and where there has been an "unauthorized use" (Sec. 6(a)). The law also states that the occupant of the land can acquire no interest in such land without "the consent of the head of the governmental unit concerned and under such terms and conditions as said head may deem necessary" (Sec. 3), and that "any conveyance of less than a fee. . . shall include provision for removal . . . of any improvements." In these circumstances an unauthorized user of public land cannot assert such dominion over public land that he can equate his legal situation to that of a private landowner in a condemnation action. The Government's assertion of a right to terminate Mr. Starr's occupation, when and if the land is needed for reclamation purposes, does not constitute an unauthorized taking of Starr's property by the Government. Consequently, in the absence of statute, there can be no right of compensation for any improvements that have been or may be constructed upon such public land. This appellant has the right to remove his improvements from the land and this is the only right granted to him under the law, insofar as it relates to his improvements.

It is true, generally, that the legislative history of the law shows that it was proposed to give a measure of relief to occupants who have been residing on invalid mining claims. However, the language of the Act states, unmistakably, that it is the intention of the Congress not to dispose of any public lands that are or may be neded for any public purposes. The stated policy of the Congress as it appears in the law must prevail.

Accordingly, the decision is affirmed and the case is returned to the State Director for further processing.

Robert E. Starrs is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stuebing

Chief, Branch of Land Appeals
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Appeals Procedures: Dismissal 1842

An appeal will be dismissed when it appears that timely compliance has been made with the requirements of the decision from which the appeal was taken, thereby rendering the appeal moot.

Adone Giannini et al., Montana 1391 (May 12, 1967)

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SACRAMENTO LAND OFFICE
1967 MAY 18 PM 2 53

In reply refer to:
704
Montana 1391

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

May 12, 1967

DECISION

Adone Giannini
Ruby Giannini

Mining Claims Occupancy Act

Appeal Dismissed
Case Remanded

Mr. Adone Giannini has appealed from a decision of the Billings, Montana Land Office dated February 17, 1967, denying his petition for statement of belief as to the validity of Nugget Knoll Placer Mining Claim because the petition did not specify the description, including dates, of improvements placed thereon. The decision allowed 30 days in which to furnish the information desired or to appeal to the Director, Bureau of Land Management.

The appellant, by letter dated February 19, 1967, furnished the Land Office with a list of improvements and dates that they were placed on the land. By letter dated February 27, 1967, Mr. Giannini appealed.

Inasmuch as Mr. Giannini has timely complied with the decision of the Land Office, the issue on appeal has become moot. The appeal, therefore, is dismissed, and the record is being returned to the Land Office, through the State Director, Montana for further appropriate action.

Edward W Stuebing
Chief, Branch of Land Appeals
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Mining Claim Occupancy Act: Qualified Applicants 2215.0-5

Where an application to purchase a tract of land in an unpatented mining claim is filed under the Mining Claim Occupancy Act, and the record shows that the applicant had resided exclusively on the mining claim for several years before occupying a small apartment furnished by her employer but continued to improve, look after, and intermittently occupy her home on the claim, she is deemed to be a residential occupant-owner of the improvements on the claim as a principal place of residence within the meaning of the act.

Lois H. Rountree, Sacramento 079919 (May 19, 1967)

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1967 MAY 31 AM 10 00

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 MAY 31 AM 10 00

In reply refer to:
704
Sacramento 079919

May 19, 1967

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Lois H. Rountree : Mining Claim Occupancy
:
:

Decision Reversed
Case Remanded

Lois H. Rountree has appealed from a decision of the Sacramento Land Office, dated November 23, 1966, rejecting her application to purchase 5 acres of certain described land in the Gum Boot and Tin Cup Mining Claim, under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. §§ 701-709. The decision appealed from offered to consider an application for a 5-year lease of a described 1.25 acre parcel of land, under the Small Tract Act of June 1, 1938 (52 Stat. 609), as amended. The stated reason for rejecting the application is as follows:

> "The record shows that the claim was not a principal place of residence for the applicant as of October 23, 1962. Use of the improvements since 1956 has been for occasional week-end occupancy. Such casual and intermittent use is not qualifying under this legislation, the purpose of which is to provide relief for persons on whom a hardship would be visited were they to be required to move from their long-established homes."

Appellant's allegations may be summarized as follows:

1. The appellant began permanent employment with the California Youth Authority at the Fricot Ranch School on April 19, 1956. On July 2, 1956, the appellant and her husband, John W. Johnson, "were allowed to use a little old one-room abandoned schoolhouse" on the Fricot Ranch School grounds. They had enough possessions in that room for a temporary rest or on occasion to sleep there. However, she and her husband drove back and forth to their mine cabin each working day from April 19, 1956,to April 1, 1957, except for a few scattered days when weather conditions made traveling the road precarious or if there was a health reason for not making the drive. The applicant moved to San Francisco on April 1, 1957, but returned to the Fricot Ranch School on August 25, 1957, and occupied the same one-room building until March 3, 1958, when her husband died suddenly. Mr. Johnson had worked on the claim the entire day before his death.

2. On March 24, 1958, the appellant was required to move from those quarters to a one-room apartment on the school grounds. She did not occupy this "tiny room" any more than she had occupied the one-room school building. During the entire summers of 1958 and 1959 the appellant used the mine cabin as her home. All of her clothes, except for an emergency change, were in the cabin. She ate in the school dining room very little because she had to pay for her meals. She usually carried her own lunch from the mine cabin.

3. The appellant remarried in October 1959. At that time her old cabin on the mine was in very bad repair and they decided to build a new house. Therefore, they bought the mobile home that is located on the Fricot School ground. A building and plumbing permit was issued to Mr. Rountree on March 12, 1962, for the home on the mining claim, and they worked on that home through that entire summer. When they started to build the new house they often drove to the claim five nights a week, doing all of the building themselves. This construction was interrupted when Mr. Rountree did the mine work. During this time, Mr. Rountree ran a tunnel more than 40 feet. However, disagreements developed between them and as a result they were divorced. Mr. Rountree conveyed his interest in the mine to the appellant by quitclaim deed on September 14, 1962.

4. The mining claim has been not only a "principal place of residence" for her, but it is the only place that she has any expectation of calling a home.

5. The appellant is entitled to the 5-acre parcel surrounding her improvements.

The Bureau's Land Examiner reported the following improvements on the land:

> "A one-room, 13' X 32' frame cabin with partially finished exterior on rock foundation; 11' X 13' corrugated iron shed; two small sheds (outhouse); one-acre orchard and vineyard; concrete and rock enclosed spring with stand pipe and gravity flow system."

A supervisory employee at the Fricot School said that the applicant is a seamstress who works there 5 days a week. This person estimated that the appellant had "spent approximately fifty percent of her time at the claim in recent years."

The land examiner's report states that the lands are best suited for multiple use management and require management for a mixture of uses such as domestic livestock grazing. Wildlife development and utilization watershed protection, outdoor recreation and timber production.

In order to resolve the issues that have been raised by this appellant, careful consideration must be given to the discussions and the rulings contained in departmental decisions Ola N. McCullough Sibley, 73 I. D. 53 (1966) and Jack A. Walker, A-30492 (April 28, 1966). In the Sibley case, the Department ruled in favor of the mining claim occupant, while in the Walker case the Department ruled against the claimant, In principle the rulings are consistent in light of the different facts in these cases.

The facts in this case are similar to the facts in the Sibley case in the following respects:

1. The appellant and her first husband commenced residence on the claim in 1950 and resided thereon for several years as a permanent place of residence.
2. Substantial improvements were constructed on the claim and they were occupied by the appellant as her residence.
3. The appellant and her first husband kept their personal belongings on the claim.
4. When the appellant remarried, after the death of her first husband, she and her second husband spent considerable time upon and substantially improved the claim.
5. The appellant did not devote her use of the claim to recreational and other related uses.
6. There is a paucity evidence that the appellant had at any time abandoned the claim and ceased to use the property.

The facts in this case are dissimilar from the facts in the Walker case in the following respects:

1. The appellant has submitted a specific and detailed statement with respect to the periods of her residence on the claim and the nature of the improvements thereon.

2. A hardship would be imposed on appellant were she required to move from the cabin on the claim.

The decision in the Sibley case recognizes that disruptions in the period of occupancy caused by cogent reasons, such as economic necessity, does not necessarily disqualify the claimant from the benefits of the act. The Sibley decision also recognizes that there are no absolute standards as to what constitutes a principal place of residence, but the facts of each case must be scrutinized to determine whether the purposes, as well as the specific requirements of the statute have been satisfied.

Viewing the evidence as a whole, it is apparent that if the appellant terminated her employment at the Fricot School, she would have no place to go if she also lost her home on the mining claim. This would be a real hardship upon this appellant. Consequently, a reasonable appraisal of the evidence warrants a finding that the appellant is an occupant-owner who is a "qualified applicant" within the meaning of the act.

A lands examination report states that the subject lands are best suited for multiple use management for "a mixture of uses" in order to best benefit the general public. The report also states that such management could not be achieved if the land was to be transferred into private ownership. Compatible with this determination, departmental regulation 43 CFR 2215.0-2(a) provides:

> "The program of the Secretary of the Interior in the administration of the Act is to grant to qualified applicants maximum tenure consistent with the public interest in the lands which they occupy. Where the public interest does not permit sale of a fee simple interest, the period of tenure granted will ordinarily not terminate until the land is needed for a public program, . . ."

In this case, although it has been determined that the sale of a fee simple interest should not be made, this Bureau will allow the applicant the maximum tenure in the land occupied by her, consistent with the public interest.

Departmental regulation 43 CFR 2215.0-3(a) provides for the conveyance of

> " . . . an interest . . . of not more than (1) five acres, or (2) the acreage actually occupied by him, whichever is less . . ."

Thus, a 1.25 acre parcel may be proper in this case.

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1967 MAY 31 AM 10 00

Accordingly, the decision is reversed and the case is remanded for further consideration.

Newton Frishberg
Chief, Office of Appeals
and Hearings

DISTRIBUTION

H. S. Gilmore
Lois H. Rountree
Hon. Harold T. Johnson, House of Repreaentatives
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
MHS

Mining Claim Occupancy Act: Qualified Applicant's 2215.0-5

A qualified applicant for conveyance of land under the Act of October 23, 1962, must have been, on that date, a residential occupant-owner of valuable improvements in an unpatented mining claim which constituted for him a principal place of residence. If the applicant ceased to use the mining claim for that purpose before that date, the benefits of the act are not available to him.

Charles S. and Anna L. Wines, Sacramento 304 (August 17, 1967)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 AUG 22 PM 2 53

In reply refer to:
704
Sacramento 304

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

August 17, 1967

CERTIFIED MAIL
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DECISION

Charles S. and Anna L. Wines : Mining Claims Occupancy Application
:
:

Decision Affirmed

Charles S. and Anna L. Wines have appealed from a decision of the Sacramento Land Office, dated April 11, 1967, rejecting their application filed pursuant to the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. Sec. 701-709 (1964), to purchase a 5 acre tract of land embraced in the unpatented Miriam Placer Mining Claim in Sec. 26 T. 31 N., R. 11 W., M.D.M.

The application was rejected for the principal reason that Mr. and Mrs. Wines did not qualify for relief under the terms of the Mining Claim Occupancy Act. Section 2 of the Act limits relief to an applicant who is "a residential occupant-owner, as of the date of enactment of this act, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than 7 years prior to July 23, 1962."

The record indicates that the appellants originally purchased the unpatented Miriam Placer Claim in 1953 with the intention of building a home on the land. However, they did not fulfill their intentions. By their own statements they admit that they moved off the claim long before October 23, 1962, with the intention of establishing their principal residence elsewhere.

A qualified applicant for conveyance of land under the act of October 23, 1962, must have been, on that date, a residential occupant-owner of valuable improvements in an unpatented mining claim which constituted for him a principal place of residence. H. T. Crandall, 72 I.D. 431 (1965). In other words, an applicant may have made a mining claim a principal place of residence, or even his sole place of residence, for 7 years or more before the date of the act, but if before that date, he ceased to use the site for that purpose, the benefits of the act are not available to him. Coral V. Funderburg, A-30514 (June 14, 1966). In view of the sequence of events in this case the Land Office correctly determined that the appellants were not entitled to relief under the act.

The appellant's only contention on appeal is that ". . . the Mining Claim Occupancy Act is morally wrong, discriminatory, and contrary to American ideals of justice and fair play." The appellants, in effect, do not disagree with the Bureau's administration of the act itself, but rather take exception to its limited provisions. The appellants have failed to show by any substantial and positive evidence that the Land Office determination is erroneous.

Accordingly, the decision is affirmed.

Charles S. and Anna L. Wines are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Mr. and Mrs. Charles Wines (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
NKS

appealed to Sec
List 2-9-66 Dismissed A-30910 1-19-68

Mining Claim Occupancy Act: Application 2215.2

An application under the Mining Claim Occupancy Act is properly rejected where the applicant did not maintain a principal place of residence on his claim for at least seven years prior to July 23, 1962.

Norman M. Imbertson, Riverside 07449 (August 31, 1967)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 SEP 25 AM 10 00

In reply refer to:
704
Riverside 07449

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

August 31, 1967

CERTIFIED MAIL
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DECISION

Norman M. Imbertson : Mining Claim Occupancy
:
Decision Affirmed

Norman M. Imbertson has appealed from a decision of the Riverside District and Land Office, dated May 25, 1967, rejecting his application 1/ to purchase certain land located in the San Bernardino National Forest containing the improvements on the "Sleepy Canyon Cabin No. 1" mining claim, under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. § 701-709 (1964). The stated reason for rejecting the application is that:

> ". . . Mr. Imbertson makes no statement to the effect that the mining claim ever was for him a principal place of residence, and in his original petition stated that 'I occupy the property each year during vacations and weekends'. . . ."

The appellant alleges:

> ". . . that certain letters from a congressman indicated that this property would come under the meaning of Principal Place of Residence as written into the law. . . ."

The appellant has not identified these letters. However, the law is well settled that no rights can be acquired in public lands of the United States in the absence of a statute giving recognition thereto. Sparks v. Pierce, 115 U.S. 408 (1885). Therefore, the appellant's rights, if any, must be considered in light of the provisions of the Mining Claim Occupancy Act, supra.

The appellant's purchase application and his photographic exhibits attached shows that he has three cabins on the applied-for land. However, a detailed field examination by the United States Forest Service shows the following:

1/ The decision also accepted his relinquishment of the said mining claim.

> ". . . the improvements as found in the claim are further described here. The basement of the main cabin is a partially lined excavation directly under the cabin. The main water source is a hand pump adjacent to the kitchen sink which draws water from a well beneath the cabin. A weekend cabin user, Mr. . . . reported that approximately one pail of water could be drawn from the well before the well was drawn down and the pump lost its prime. Another well is located about 30 feet from the main cabin. A hand pump atop this well was filled with leaves indicating non-use. Large gaps in the covering boards allowed dirt, leaves and other foreign substances to settle into the outside well. The only electrical outlets in the main cabin appear to be ceiling light sockets. No appliances requiring electricity appear in the main cabin. There is no evidence of a generator on the claim. Commercial power is not available. Inspection of the wiring indicates rewiring should be accomplished before the system is tied into electrical power. The kitchen sink was tied into a surface pipe which carried waste away from the cabin. The pipe has rusted out and filled in with dirt. Sewage is now dumped directly onto the ground surface two feet from the cabin. The ground indicated that only small amounts of sewage have been carried through this system in recent years. The main cabin has two stoves, a wood cooking stove and a wood heating stove. Refrigeration is by an ice-box. A semi-enclosed "out house" and a small stall with a sprinkler head attached to an overhead water barrel constitute the "bathroom facilities". There were no clothes washing appliances. The cabin does not have a water heater.
>
> The second cabin or bunk house consisted of a one room building with wood stove. Two bed frames stood in the room. There were no mattresses or blankets in evidence.
>
> The workshop was a small shed, apparently in non-use for a considerable time.
>
> Travel in and out of the driveway was insufficient to disturb the leaf drop from the mountain mahogany.
>
> Wood is the only fuel for heating and cooking. Only an armful of kindling exhibited evidence of recent gathering. The remainder of the woodpile amounted to less than a cord, and judging by the dark color of the wood, it had been setting there for several years."

Furthermore, the appellant's statement, supra, confirms that his occupancy of the mining claim site was limited to "vacations and weekends."

Section 2 of the Act, supra, provides that:

> ". . . a qualified applicant is a residential occupant-owner, as of the date of the enactment of this Act, of

> valuable improvements in an unpatented mining claim which constitutes for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962."

A cabin which is used intermittently during vacations weekends and other leisure periods for a relatively brief portion of each year does not constitute a principal place of residence within the meaning of section 2 of the Act of October 23, 1962, and an application for the conveyance of land based upon such use is properly rejected. Jack T. and Gladys I. Lofstrom, A-30699 (March 23, 1967).

Accordingly, the decision is affirmed.

Nornam M. Imbertson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION:
Norman M. Imbertson (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Division of Watershed Management, Forest Service (12)
Appeals List No. 1
MHS

appealed to Sec.
affirmed
A-30895- 4-25-68

Appeals Procedures: Dismissal 1840.0-7

A statement of reasons for appeal, which does not point out wherein the decision appealed from is in error, is subject to dismissal.

Appeals Procedures: Standing to Appeal 1842.2

Where a small tract offer to lease is not assignable or inheritable and the offeree dies, an appeal by his "agent", which indicates that it may have been taken for the benefit of heirs who have not shown that they have any standing to appeal, is subject to dismissal.

Christian E. Wicks, deceased, Sacramento 078735 (September 7, 1967)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 SEP 20 AM 10 00

In reply refer to:
704
Sacramento 078735

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

September 7, 1967

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DECISION

Christian E. Wicks, : Small Tract
deceased :

Appeal Dismissed

Mrs. H. S. Gilmore, as "agent" for Christian E. Wicks, deceased, has appealed from a decision of the Sacramento Land Office, dated April 18, 1967, offering Mr. Wicks a 5-year non-renewable small tract lease for one acre of certain lands he had been occupying.

Mrs. Gilmore submitted a statement of reasons for appeal as follows:

> 1. That the above dated decision was received by me as Agent for Christian E. Wicks, on April 19, 1967, subsequent to the death of my client, notice of which I had just received.
>
> 2. That I reported applicant Wicks' death to Mr. Zentner of the State Office of the Bureau of Land Management, but I have had no word of cancellation of the lease offer submitted with the decision of April 18, 1967, nor notice of any kind.
>
> 3. That I have notified the children of applicant Wicks and have learned of their continued interest in the cabin and acreage surrounding the cabin so long occupied and used by their father.
>
> This notice of and reasons for appeal and the enclosed $5.00 filing fee are filed to be sure that any consideration due the adult children heirs of Christian E. Wicks will not be lost.

Item no. 2, of the lease terms, provides as follows:

> 2. The lessee may not assign any rights or privileges granted by this lease . . . . This lease shall not inure to the benefit of the heirs, executors, administrators, successors, and assigns of the lessee hereto."

Mrs. Gilmore does not dispute any of the provisions of the small tract offer to lease or the Bureau's authority to insert such terms into a small tract lease offer on public lands.

The Department has consistently held that an individual who appeals from a Land Office decision is required to assume the burden of clearly pointing out the precise grounds upon which reversal is sought, and an appeal to the Director is properly dismissed when the appellant fails to allege facts or to present evidence in support of his allegation of error. *Maria Fischer*, A-303194 (June 7, 1965); *Duncan W. Cleaves*, A-29354 (May 6, 1963); *Edward G. Gee*, A-30042 (August 26, 1963).

The offer to lease in this case expressly provides that it is neither assignable nor inheritable. Since Christian E. Wicks has died and the lease offer was personal to Mr. Wicks, no cancellation of the offer to lease was required. The offer terminated by operation of law. Consequently, since the offeree's rights did not survive him, the heirs of Christian E. Wicks are strangers to this case and they have no standing to appeal.

In addition, when Mrs. Gilmore's principal died, her agency relationship with him terminated by law. Therefore, her purported status as his agent cannot be recognized.

Accordingly, the appeal is dismissed.

Mrs. H. S. Gilmore and the Heirs of Christian E. Wicks are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form Wo 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Newton Frishberg
Chief, Office of Appeals
and Hearings

Enclosures 2
DISTRIBUTION:
Mrs. H. S. Gilmore (Certified Mail)
Heirs of Christian E. Wicks c/o Mrs. H. S. Gilmore (Certified Mail)
Hon. Harold T. Johnson, House of Representatives
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
MHS

mcoA Appealed to Sec.
affirmed A-30901
5-21-68

Mining Claim Occupancy Act: Qualified Applicants 2215.0-5

> A cabin which is used casually and intermittently does not constitute "a principal residence" within the meaning of section 2 of the act of October 23, 1962, when it appears such intermittent use is by reason that other principal places of residence are maintained to which the applicants are bound by employment, and not by reason of weather or topography. Under such circumstances the applicants are not qualified for a conveyance of the land they have occupied and the application is properly rejected.

Eveline and John Anthony Schaefer, Riverside 06524 (September 22, 1967)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 OCT 2 AM 10 00

In reply refer to:
704
Riverside 06524

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 OCT 2 AM 10 00

September 22, 1967

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DECISION

Eveline and John Anthony Schaefer : Mining Claim Occupancy Act
:
Decision Affirmed

Eveline and John Anthony Schaefer have appealed from a decision of the Riverside District and Land Office, dated April 12, 1967, rejecting their application filed pursuant to the act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. Sec. 701-709 (1964) to purchase a tract of land embraced in the unpatented Saint Joseph mining claim in Section 32, T. 6 S., R. 4 E., S.B.M., located in the San Bernardino National Forest 1/. The decision held that the appellants have failed to make a satisfactory showing that as of October 23, 1962, the improvements on the claim constituted for them "a principal place of residence" within the meaning of the Mining Claim Occupancy Act.

The appellants assert that the findings in this decision are incorrect; that the Land Office erred by not concluding that they used the claim as a principal residence; and that they are qualified applicants as defined in the Mining Claim Occupancy Act.

Section 2 of the act of October 23, 1962, supra, provides that:

> For the purposes of this Act a qualified applicant is a residential occupant-owner, as of the date of enactment of this Act /October 23, 1962/, of valuable improvements in an unpatented mining claim which constituted for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962.

The Department's regulations, designed to supplement and implement the statute, define the term principal place of residence as:

> . . . an improved site used by a qualified applicant as one of his principal places of residence except during periods when weather and topography may make it impracticable for use. The term does not mean a site given casual or intermittent residential use, such as for hunting cabin or for weekend occupancy. (43 CFR 2215.0-5(d)).

1/ The record indicates that the mining claim was determined to be invalid May 25, 1965.

The Department has discussed the legislative history of this requirement in great detail in several recent decisions. In H. T. Crandell, 72 I.D. 431 (1965), the Department first stated:

> The legislative history strongly indicates that 'a principal place of residence' must be in the nature of a home which the occupant leaves periodically only because of adverse weather conditions or some similar circumstance makes it impossible or impracticable for him to live there on a year-round basis. But however that may be, it seems clearly to exclude a place to which a person repairs only on weekends and during vacations, while maintaining his home elsewhere. 72 I.D. 431, 434-435.

In subsequent cases the Department has reaffirmed this interpretation. See Jack A. Walker, A-30492 (April 1966); Coral V. Funderburg, A-30514 (June 14, 1966).

In the instant case the Land Office determined that the Schaefers' use of the claimsite was of a casual and intermittent nature. This was founded upon the Schaefers' own statements in their application and subsequent affidavits and field reports of the U.S. Forest Service. Both sources clearly indicate that as of October 23, 1962, the Schaefers' maintained 3 seperate residences. The Schaefers' affirm the fact that they maintained (1) an apartment at 1835 Cahuenga Boulevard, Hollywood, California, in order to be close to Mr. Schaefer's business office in Hollywood (2) a house at 31400 Calle Jessica, Thousand Palms, California, which they admit using regularly 2 or 3 days a week since 1950 in order to be close to certain business customers and (3) the house in section 32 (the claim site) which they allege they have used when weather is not inclement and during the spring, summer and fall.

The record further shows that there are substantial improvements on the site including a well furnished five room cabin which is equipped with many electrical appliances and an electrical water pump. Although the cabin is suitable for continuous occupancy for the entire year, the Schaefers have made, at best, only periodic use of the facilities. Their absences were not by reason of weather or topography or some similar circumstance. By their own admissions they indicate that because of Mr. Schaefer's employment as a saleman it has been necessary to maintain three seperate residences. They acknowledge the fact that because of Mr. Schaefer's position it is necessary to spend considerable time at their other two residences. For this reason it is evident that they are not able to continuously occupy the claim site. Such a circumstance is not one which permits the applicants to claim that the cabin on their mining claim is a principal residence within the meaning of the act of October 23, 1962. On similar facts the Department has recently held that a cabin which is used intermittently, although as frequently as twice weekly, does not constitute "a principal place of residence" within the meaning of section 2 of the act of October 23, 1962, when it appears that such intermittent use is by reason that another principal place of residence is maintained to which the applicants are bound at least by employment and by the educational needs of their children, and not by reason of weather or topography. Herman C. and Edith O. Kampling, A-30592 (September 26, 1966).

In the Kampling case, supra, the Department again alluded to the legislative interpretation of the act stating:

> There is no doubt as to the purpose of the act. As the Senate Committee stated:
>
> The bill is a relief measure designed to aid those qualified people on whom a hardship would be visited were they to be required to move from their long-established homes. S. Rep. No. 1984, supra, 3.
>
> In other words, the purpose of the law is to preserve homes for qualified occupants of mining claims, places where they have lived for years and from which their forced removal because of the invalidity of the mining claims would be a real hardship. There was no solicitude expressed by the Congress for the person who has a home elsewhere and who merely occupied the mining claim on a limited basis or for a limited purpose. Such a person would not be uprooted from a home if denied the right to occupy the claim. Cf. Jack A. Walker, supra.

The appellants have requested a hearing be held pursuant to 43 CFR 1851 - Hearings on Appeals Involving Questions of Fact. They allege that the case may not properly be determined from record information and that failure to grant a hearing "will deprive them of both procedural and substantive due process of law."

In responding to this request for a hearing it should first be noted that an applicant under the Mining Claims Occupancy Act has no absolute property right in his residence site. The act provides relief for certain persons who are occupying lands belonging to the United States without any legal right to be there. Moreover, the act assures no one, even if found to be a qualified applicant, a right to obtain any interest in the land they have occupied. Whether relief is to be granted and the extent of relief to be granted are discretionary matters with the Secretary of the Interior and Secretary of Agriculture, in the case of Natural Forest Lands. Therefore, persons seeking such relief are not being deprived of property without due process of law when it is determined that a hearing is not required in every case. A qualified applicant has only a potential privilege to acquire an interest in Government land. Under such circumstances, there is no constitutional requirement to grant a hearing on the issue of whether an interest in land should be granted. See Ferry v. Udall, F. 2nd. 706 (9th Cir. 1964).

There are no statutory and regulatory provisions requiring a hearing in these proceedings. Hearings are not granted as a matter of course to determine issues of fact involved in an appeal. While a hearing "may" be granted by the Director in his discretion, the appellants have not made a satisfactory showing wherein the submission of written evidence would not afford sufficient basis for a determination in this matter.

A hearing is considered appropriate only if there is a reasonable likelihood that it will develop facts which would be decisive of the issues involved. Cf. Margaret A. Andrews et al., 64 I.D. 9 (1957). In this case there has been no restriction on the appellants' right to submit any evidence they deemed pertinent to their arguments on appeal. Yet appellants evidence consists mainly of their own unsupported statements setting forth general allegations that their claim site has been "continuously occupied" as a principal residence in compliance with the law. Appellants have provided no factual data setting forth the actual time they have spent at the claim nor have they provided any corroboration of their own statements. In lieu of offering any evidence tending to substantiate their assertions, appellants have concerned themselves with explaining away their apparent lack of continuous occupancy of the claim and attacking the credibility of the U.S. Forest Service reports. 2/ However, even if we accepted the appellants' statements on their face, the appellants have not asserted facts that would establish that they are qualified applicants under the Mining Claim Occupancy Act. Therefore, we feel the present record is sufficient to properly dispose of the issues involved.

Accordingly, the request for a hearing is denied and the decision of the Riverside Land Office is affirmed.

Mr. and Mrs. Schaefer are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellants will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

2/ 3 different reports of Forest Service personnel familiar with the area conclude that the Schaefers have not used the claim site as a permanent residence.

Although the Forest Service was not named as a party below, if an appeal is taken the adverse party to be served is:

Regional Forester
Forest Service
United States Department of Agriculture
630 Sansome Street
San Francisco, California 94111

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Mr. Milton Wichner, Attorney for Appellants (Certified Mail)
Mr. and Mrs. John Anthony Schaefer
Regional Forester, Forest Service, U.S. Department of Agriculture
Div. of L&M S&T (4)
Div. of L&M PM (2)
Forest Service, U.S. Department of Agriculture
OPD
Appeals List No. 1
NKS

DEPT. OF INTERIOR
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SACRAMENTO LAND OFFICE

1967 OCT 2 AM 10 00

Mining Claim Occupancy: Application 2215.2

An application under the Mining Claim Occupancy Act is properly rejected where the applicant or her predecessors in interest did not maintain a principal place of residence on the claim for at least seven years prior to July 23, 1962.

Thelma Fern, Sacramento 41 (October 5, 1967)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 OCT 20 AM 10 00

In reply refer to:
704
Sacramento 41

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

October 5, 1967

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Thelma Fern : Mining Occupancy application

Decision Affirmed as Modified

Mrs. Thelma Fern has appealed from a decision of the Sacramento Land Office, dated April 28, 1967, which rejected her application to purchase five acres of the Midnight #1 mining claim filed pursuant to the act of October 23, 1962, 30 U.S.C. §§701-709(1964). 1/ The decision appealed from held that the applicant cannot qualify for relief under the Mining Claim Occupancy Act since the site was not a principal place of residence for the applicant on October 23, 1962.

The salient facts are these. There are valuable improvements and a residence on the subject land which have been in continuous use from July 23, 1955, to the present. The original locators, a Mr. and Mrs. Platz, quitclaimed the property on September 15, 1958, to the appellant and Owen J. Morris. 2/ On May 2, 1959, Morris quitclaimed his interest in the land to the appellant. 3/ From September 1958 to November 1963, Morris was the principal resident on the claim. 4/ In the summer of 1963 an additional bedroom was constructed so that the appellant could live on the claim. The room was completed around November 1963.

Mrs. Fern in her statement of reasons for the appeal states that "prior to May 1962 . . . Mr. Fern and I did not use the house as a principal place of residence, as Mr. Fern was still employed at the San Francisco Chronicle . . ."

Section 2 of the Mining Claim Occupancy Act, in pertinent part, reads:

> . . . a qualified applicant is a residential occupant-owner, as of the date of enactment of the Act, of valuable improvements in an unpatented mining claim which constitute for him a

---

1/ The tract is in the Tahoe National Forest and is described as: W$\frac{1}{2}$NE$\frac{1}{4}$NW$\frac{1}{4}$NW$\frac{1}{4}$, Section 11, T. 18 N., R. 8 E., M.D.M., California.

2/ There is no evidence in the case file to indicate that the Platz' occupied the property as a "principal place of residence" from 1955 through 1958.

3/ The appellant refers to Mr. Morris as her "partner".

4/ The appellant's husband was forced to retire in May 1962 and appears to have spent two or three months in 1962 and 1963 on the property helping with miscellaneous maintainence and mining work.

> principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962.

The Departmental holding in Mrs. B. F. Rorick, A-30399 (November 16, 1965) is apposite to this case wherein it was stated:

> The critical questions in this case are whether the appellant occupied the improvements on the mining claim as a "principal place of residence" on October 23, 1962, and whether she had so occupied the premises for at least 7 years prior to July 23, 1962. As the Bureau pointed out, the term "a principal place of residence" means an improved site used by an applicant as one of his principal places of residence except during periods when weather and topography may make it impracticable for use. It does not mean a site that is given casual or intermittent residential use. 43 CFR 2215.0-5(d); H. T. Crandell, 72 I. D. 431 (1965).

The appellant, herself, was not occupying the claim as a principal place of residence on October 23, 1962, as apparently she was awaiting the construction of a bedroom at the claim for her use. 5/

The record is clear that neither the appellant, her husband, nor her predecessors in interest occupied the premises as a principal place of residence for the 7 years prior to July 23, 1962. The principal occupancy during the 7-year period was by Mr. Owen J. Morris who divested himself of his interest on May 2, 1959. Thereafter his occupancy of the claim cannot be considered that of a "predecessor in interest," but was actually that of a tenant. The Mining Claim Occupancy Act, supra., and the regulations thereunder, apply only to a residential occupant-owner, and not to other persons who have occupied the land with the permission of the claimant. Therefore, the periods of use by the appellant's "partner" are not creditable under the Act. The earliest time by which it can be determined that residency was resumed by one having a vested interest in the property was some time subsequent to Mr. Fern's retirement from the San Francisco Chronicle in May of 1962. This would assume that Mr. Fern had some interest in the property flowing from the marital relationship. 6/ However, inasmuch as the appellant and her predecessors in interest did not reside on the land for 7 years prior to July 23, 1962, it is not necessary to discuss this aspect.

5/ In a brief resume of her activities concerning the claim, the appellant states that sometime after September 7, 1962, her husband and Mr. Morris returned to the cabin on the claim after a trip to the Seattle World Fair but she remained in the Bay Area trying to dispose of some property.

6/ In her statement of reasons for the appeal Mrs. Fern states: "The reason the claims were placed in my name only was because of personal financial conditions on both the part of Mr. Fern and Mr. Morris but they have both worked and resided here."

As the record is clear that neither the appellant nor her predecessors in interest used the site for 7 years as a principal place of residence subsequent to July 23, 1962, the decision appealed from is affirmed as modified herein.

Mrs. Thelma Fern is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence wherein the decision appealed from is in error.

If an appeal is taken the adverse party to be served is:

Regional Forester, California Region
630 Sansome St.
San Francisco, California 94111

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

DISTRIBUTION

Mrs. Thelma Fern (Certified Mail)
Regional Forester, California Region
Forest Service, USDA, Div. of Watershed Management (12)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
JBJ

Mining Claim Occupancy Act: Applications 2215.2

An application under the Mining Claim Occupancy Act is properly rejected where the applicant does not show that he had maintained a principal place of residence on the claim for at lease seven years prior to July 23, 1962.

Ralph Navarrette, Sacramento 102 **OCT 25 1967**

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1967 NOV 3 AM 10 00

In reply refer to:
704
Sacramento 102

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

OCT 25 1967

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Ralph Navarrette : Mining Claim Occupancy

Decision Affirmed

Ralph Navarrette has appealed from a decision of the Sacramento Land Office, dated June 8, 1967, rejecting his application to purchase certain land in the Trinity National Forest containing the improvements on the "Good Hope" mining claim, under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127. 30 U.S.C. § 701-709 (1964), for the reason that the cabin on the claim was not constructed until 1966.

The appellant alleges as follows:

> "* * * I lived there for six years since 1952. I had material for a cabin since 1952 and I finally built a cabin there in 1966. * * * "

The appellant also alleges:

> "I received a bill to pay taxes on this property * * * and if this property isn't mine why do I have to pay taxes? * * *"

The appellant does not explain, and there is nothing in the case file that explains, the circumstances under which he allegedly lived on the claim "for six years since 1952."

In determining the qualifications of an applicant under the act, the determination must be made on the basis of facts that existed on or before October 23, 1962. Occupancy of a mining claim after that date is of no consequence in determining an applicant's qualifications, but it may be an aid in determining prior intent. Ola N. McCulloch Sibley, 73 I.D. 53, 56 (1966).

A field examination made by the United States Forest Service shows that no building or other construction was on the subject land from 1954 through 1965. The field report also states that there is no record of any assessed values of land and improvements in the Trinity County Assessor's Office for Mr. Navarrette. There is, however, such a record for the "Mt. Bally Placer Mining Claim" which describes the same land as the "Good Hope" claim. The "Mt. Bally" claim is a prior location by a different person.

Section 2 of the Act, 76 Stat. 1127, 30 U.S.C. § 702 (1964), provides that:

> "* * * a qualified applicant is a residential occupant-owner, as of the date of enactment of this Act, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962."

The term "a principal place of residence" means an improved site used by the applicant or his predecessors in interest as one of his principal places of residence for at least 7 years prior to July 23, 1962. Mrs. B. F. Rorick, A-30399 (November 16, 1965).

It is obvious from the information in the case record that no improved site was on the subject land prior to July 23, 1962. Therefore, appellant could not have maintained "a principal place of residence" on the claim as required by law.

The mere fact that the appellant received a bill to pay local taxes is not relevant to the issues in this case and, therefore, it cannot be considered.

Accordingly, the decision is affirmed.

Ralph Navarrette is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

In the event of an appeal the adverse party to be served is the:

Regional Forester, California Region
U. S. Forest Service
630 Sansome St.
San Francisco, Calif. 94111

Edward W Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION
Ralph Navarrette (Certified Mail)
Regional Forester, U. S. Forest Service
Div. of Watershed Management, Forest Service, Washington, D. C. (12)
Div. of L&M S&T (4)
Div. of L&M PM (4)
OPD
Appeals List No. 1
MHS

[illegible]

Mining Claim Occupancy Act: Generally 2215

When a qualified applicant applies for land withdrawn in aid of a function of a municipality or other local governmental agency, the Secretary of the Interior or his delegate may convey an interest therein only with the consent of the head of the governmental unit concerned and under such terms and conditions as that official may deem necessary.

Walter [illegible], Riverside 03575 (January 5, 1968)

appeal to Sec.
modified & Remanded A-30~~398~~ 938 11-13-68

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1968 JAN 17 PM 2 55

Mining Claim Occupancy Act: Generally 2215

When a qualified applicant applies for land withdrawn in aid of a function of a municipality or other local governmental agency, the Secretary of the Interior or his delegate may convey an interest therein only with the consent of the head of the governmental unit concerned and under such terms and conditions as that official may deem necessary.

Walter Tampson, Riverside 03575 (January 8, 1968)

In reply refer to:
704
Riverside 03575

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

January 8, 1968

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DECISION

Walter Tampson : Mining Claim Occupancy Act

Decision Affirmed

On April 27, 1964, Walter Tampson, asserting ownership thereof, filed his relinquishment of the Helen Jane Placer mining claim, lying in the NW¼NW¼ NE¼SW¼ sec. 21, T. 10 S., R. 34 E., Mount Diablo Meridian, California. On the same date he filed his application to purchase the above-described tract under the Act of October 23, 1962 (76 Stat. 1127) and the regulations in 43 CFR 2215. On November 1, 1967, the Riverside District and Land Office accepted the relinquishment, adjudged the mining claim invalid, and offered the occupant Mr. Tampson a lease for his own lifetime.

Mr. Tampson has appealed from this decision, stating that his principal reason for appealing is:

> * * * by reason of the fact that Mr. Tampson is in excess of 70 years of age and the property is occupied not only by himself but other members of the family who are much younger than Mr. Tampson. I have discussed with members of the Riverside office of the Bureau of Land Management the possibility of negotiating for a lease for the lifetime of another family member * * *."

The record shows that Mr. Tampson claimed occupancy of the tract in question and title to valuable improvements thereon, and that it was determined that he was the qualified occupant of the land (43 CFR 2215.0-5(a) and (b)). As the sole qualified occupant he is the only party to whom any interest in the land may be granted.

The improvements are located on land which is part of a larger tract withdrawn under the Act of March 4, 1931 (46 Stat. 1530) for protection of the watershed of the City of Los Angeles. The 1962 Act, supra, provides that when a qualified applicant applies for land which has been withdrawn in aid of a function of a municipality or other local governmental agency, the Secretary of the Interior may convey an interest therein only with the consent of the head of the governmental unit concerned and under such terms and conditions as that official may deem necessary (43 CFR 2215.0-3(b)). (emphasis added). The Department of Water and Power, City of Los Angeles, has consented only to a lease for Mr. Tampson's life, and has objected strongly to any other term or fee transfer. In view thereof, the decision of the Riverside District and Land Office in offering a lease for Mr. Tampson's life was correct and is affirmed.

Mr. Tampson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward H. Stuebing

Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION
Mr. Verne Summers, Attorney at Law (Certified Mail)
Mr. Walter Tampson
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
LSH

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1968 JAN 17 PM 2 54

Mining Claim Occupancy Act: Qualified Applications 2215.0-5

A qualified applicant for conveyance of land under the Act of October 23, 1962, must have been, on that date, a residential occupancy-owner of valuable improvements in an unpatented mining claim which constituted for him a principal place of residence.

Mining Claim Occupancy Act: Generally 2215

An applicant to purchase land under the Act of October 23, 1962, must relinquish all right in and to such claim which he may have under the mining laws, after due notice to him that the claim is believed to be invalid.

Scott T. Gordon, Dorothy L. Gordon, Harlene M. Gordon, Riverside 06958
(January 9, 1968)

In reply refer to:
704
Riverside 06958

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

January 9, 1968

CERTIFIED MAIL
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DECISION

Scott T. Gordon :
Harlene M. Gordon : Mining Claim Occupancy
Dorothy L. Gordon :
:
Decision Affirmed

On August 5, 1965, the above-named parties filed a petition for a statement of belief as to the validity of the Darlene placer mining claim, located in the SW¼SW¼ sec. 28, T. 28 S., R. 39 E., Mount Diablo Meridian, California. The record shows that they located the claim on March 1, 1955, recording it locally on March 23, 1955. A statement of belief that the claim was invalid was issued on January 10, 1966, by the Riverside District and Land Office. On September 13, 1967, the Gordons filed an application under the Act of October 23, 1962, 76 Stat. 1127, 30 U.S,C. § 701-709 (1964), and the regulations in 43 CFR Subpart 2215. The application was rejected on October 27, 1967, by the Riverside office because the applicants had not filed a relinquishment of their mining claim and the application was therefore premature, and for the further reason that the applicants had not submitted any showing that the improvements they had placed on their claim constituted a principal place of residence. The Gordons have appealed from this rejection of their application to purchase the land containing their improvements.

In their appeal, the appellants claim that they have been on the land since 1955. However, they do not show any specific dates when they actually occupied the land as a residence. The appellants have not presented any clear and convincing evidence of their occupancy of the land as a principal place of residence on October 23, 1962, and for at least seven years prior to July 23, 1962, as required by Section 2 of the 1962 Act, _supra_. _H. T. Crandall_, 72 I.D. 431 (1965); _Lois Rountree_, Sacramento 079919 (May 19, 1967).

The 1962 Act states in pertinent part:

> The Secretary may make a * * * conveyance to any occupant of an unpatented mining claim who, after notice * * * that the claim is believed to be invalid, _relinquishes_ * * * _all right in and to such claim which he may have under the mining laws._ (emphasis added)

The appellants did not file the relinquishment with, or before, the filing of their purchase application, after notice on January 10, 1966, that the claim is believed to be invalid. Nor have they filed the relinquishment in response to the October 27, 1967, decision of the Riverside office.

Accordingly, the decision of the Riverside office was correct in rejecting their application, and the decision is affirmed. This action is without prejudice to the appellants' filing of the required relinquishment and a new application to purchase the land upon which their improvements are located, with an appropriate showing of their occupancy of the land to meet the residence requirements of the 1962 Act specified above.

The Gordons are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed, the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stuebing

Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION:
Scott T. Gordon, Dorothy L. Gordon, Harlene M. Gordon (Certified Mail)
SD (California)
D&LO (Riverside)
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Div. of L&M PM (2)
OPD
Appeals List No. 1
LSH

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1968 FEB 5 PM 10 00

Mining Claim Occupancy Act: Qualified Applicant 2215.0-5

One who has not resided on the land as an occupant-owner for at least seven years prior to July 23, 1962 is not a qualified applicant under the Act of October 23, 1962.

Philip W. Piper and Phyllis Piper, Sacramento 797 (January 18, 1968)

In reply refer to:
704
Sacramento 797

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

January 18, 1968

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Philip W. Piper and :
Phyllis Piper :
: Mining Claim Occupancy

Decision Affirmed

The above-named parties have appealed from the October 10, 1967, decision of the Sacramento Land Office, which rejected their application to purchase land in secs. 28 and 33, T. 2 S., R. 17 E., Mount Diablo Meridian, California, under the Act of October 23, 1962 (76 Stat. 1127). The application was rejected because the applicants are not qualified, not having lived on the land as occupant-owners for at least seven years prior to July 23, 1962.

In their appeal, Mr. and Mrs. Piper state that they began making improvements in the latter part of 1958; that they located and recorded the mining claim upon which the present application is based on September 12, 1960; and made various other improvements between that time and the end of 1967. They have not, however, presented any evidence of the occupancy of the claimed land for the required seven years prior to July 23, 1962. They show occupancy for only about three and one-half years prior to July 23, 1962, and are therefore not qualified applicants under the 1962 Act. Mrs. B. F. Rorick, A-30399 (November 16, 1965). Cf. Ola W. McCulloch Sibley, 73 I.D. 53 (1966).

The decision of the Sacramento office is affirmed.

Philip W. Piper and Phyllis Piper are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stuebing

Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2
DISTRIBUTION:
Mr. and Mrs. Philip W. Piper (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2); OPD
Appeals List No. 1
LSH

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1968 FEB 5 PM 10 00

Mining Claim Occupancy Act: Generally 2215

Where it has been determined that a parcel of land, for which the appellant is offered a life tenure occupancy lease, is part of a large block of public domain that is suitable for retention and multiple-use management by the Federal Government, an application for a limited patent or deed, instead of a lease, will be denied.

Lois H. Rountree, Sacramento 079919 (January 29, 1968)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In reply refer to:
704
Sacramento 079919

Janaury 29, 1968

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Lois H. Rountree : Mining Claim Occupancy

Decision Affirmed

Lois H. Rountree has appealed from a decision of the Sacramento Land Office, dated August 29, 1967, offering her a life tenure occupancy lease under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. 701-709, for 1.98 acres of land, located in the former Gum Boot and Tin Cup mining claims. [1]

The classification report, upon which the Land Office decision is based, states that, "The subject land is part of a large block of public domain that has been identified as suitable for classification for retention and multiple-use management by the Federal Government under the Classification and Multiple Use Act of September 19, 1964."

The appellant alleges as follows:

1. That the multitudinous requirements and restrictions and terms of said life-tenure occupancy lease are unreasonable and restrictive beyond any need in the name of the public interest.

2. This small parcel of land should be offered to her in a limited patent or deed which in addition to the reservation of all minerals to the Government could carry a provision for repossession by the Government if and when it is required for a public program.

3. Appellant is required to pay the Government for the privilege of living in the home that she built and paid for and still be subject to the cancellation of the lease at any time.

---

[1] Mrs. Rountree had previously appealed from a decision rejecting her application to purchase 5 acres of the land and offering her a 5-year small tract lease for 1.25 acres. This decision was reversed and the case remanded by the Chief, Office of Appeals and Hearings by a decision of May 19, 1967.

The lease rental payment of $74 annually is not for the lessee's "privilege of living in the home that she built and paid for." It is for the use and occupation of 1.9 acres of Government-owned land, at the approximate rate of $6.17 a month. This rate is not exhoribitant.

The request for "a limited patent or deed" cannot be allowed, because it is the Bureau's intent to protect only Mrs. Rountree's occupancy of the land as a principal place of residence. To accede to the appellant's request would make possible the sale or lease of the improvements and occupancy of the tract by another during her lifetime. Consistent with the Bureau's intent, the lease provides against assignment and sub-leasing by the lessee. The lease also provides that the lands are to be used for residential purposes only. These and the other conditions in the lease are not onerous.

Accordingly, the decision is affirmed.

Lois H. Rountree is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION

Gilmore & Gilmore Attorneys at Law (Certified Mail)
Lois H. Rountree
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
MHS

appeal to Sec.
affirmed A-30951 11-21-68

Mining Claim Occupancy Act: Qualified Applicants 2215.0-5

A cabin which is used intermittently during vacations, weekends and other leisure periods for a relatively brief portion of each year does not constitute a principal place of residence within the meaning of section 2 of the Act of October 23, 1962, and an application for the conveyance of land based upon such use is properly rejected.

Robert A. and George C. Johnson, S-967 (January 30, 1968)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1968 FEB 8 AM 10 00

In reply refer to:
704
S-967

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

January 30, 1968

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Robert A. Johnson :
: Mining Claim Occupancy
George C. Johnson :

Decision Affirmed

Robert A. and George C. Johnson have appealed from a decision of the Sacramento Land Office, dated November 7, 1967, which rejected their application to purchase the S½NE¼SE¼SE¼ Section 1, T. 3 S., R. 15 E., M.D.M., California. 1/ The Land Office decision concluded that the Johnsons were not qualified applicants under the Mining Claim Occupancy Act (76 Stat. 1127, 30 U.S.C. Sec. 701-709 (1964)) because the Rifle Barrel mining claim on which they had resided did not constitute for them "a principal place of residence."

The appellants assert that they have resided on this claim since 1951 as one of their residences for at least two months out of each year, plus vacations and holidays and that this claim has been one of their principal places of residence.

Section 2 of the act of October 23, 1962, supra, provides that:

> For the purposes of this Act a qualified applicant is a residential occupant-owner, as of the date of enactment of this Act /October 23, 1962/, of valuable improvements in an unpatented mining claim which constituted for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962.

The Department's regulations, designed to supplement and implement the statute, define the term principal place of residence as:

> . . . an improved site used by a qualified applicant as one of his principal places of residence except during periods when weather and topography may make it impracticable for use. The term does not mean a site given

---

1/ These lands include the Rifle Barrel placer mining claim which was declared null and void October 25, 1966.

> casual or intermittent residential use, such as for hunting cabin or for weekend occupancy. (43 CFR 2215.0-5(d)).

In this case the land office determined that the Johnsons' use of the claim site was of a casual and intermittent nature. Record information conclusively supports this determination. During the period which the appellants claim a principal residence on the subject tract they have maintained separate residences at 1501 San Ardo Drive and 444 North 15th Street, San Jose, California, where, according to local records, they have received their mail, voted in all elections and paid their taxes.

Although appellants have had ample opportunity they have provided no evidence to dispute field reports which conclude that appellants and members of their family have made only limited and periodic use of the claim site. Furthermore, appellants' own statements on appeal that "they have resided on said premises for at least two months out of each year, plus vacations and holidays" merely confirm this conclusion.

The Department has ruled under such circumstances that limited use on vacations and weekends does not qualify as "a principal residence."

A cabin which is used intermittently during vacations, weekends and other leisure periods for a relatively brief portion of each year does not constitute a principal place of residence within the meaning of section 2 of the Act of October 23, 1962, and an application for the conveyance of land based upon such use is properly rejected. Jack T. and Gladys I. Lofstrom, A-30699 (March 23, 1967).

Accordingly, the decision is affirmed.

Robert A. and George C. Johnson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D.C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stuebing

Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2
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Hon. Don Edwards, House of Representatives
Hon. Harold T. (Bizz) Johnson, House of Representatives
OPD
Appeals List No. 1
NKS

appeal to Sec
affirmed as modified A-30961 11-13-68

DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1968 FEB 21 PM 3 11

Cy in case

Mining Claim Occupancy Act: Generally 2215

> Where a Land Office decision rejected an application under the Mining Claim Occupancy Act and offered the applicants an accomodation 5-year small tract lease and the appeal from the decision is limited to a petition for additional privileges under the small tract law, the decision will not be disturbed in the absence of evidence showing that it was arbitrary.

Virgil C. and Lucy M. Boudreau, Sacramento 080117 (February 14, 1968)

In reply refer to:
704
Sacramento 080117

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

February 14, 1968

CERTIFIED MAIL
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DECISION

Virgil C. and Lucy M. Boudreau : Mining Claim Occupancy Small Tract

Petition for Additional Relief Denied

The appeal by Virgil C. and Lucy M. Boudreau from a decision of the Sacramento Land Office, dated September 19, 1967, is essentially a petition for additional relief. The Land Office decision had rejected the appellants' application under the Mining Claim Occupancy Act of October 12, 1962, 30 U.S.C. 701-709, for land located in the former North Extension of the Thomas H. Benton and Amador View Mining Claims and offered them, as an accomodation, a 5-year small tract lease under the Act of June 1, 1938. The appellants have not disputed the Land Office ruling that they do not qualify under the Mining Claim Occupancy Act, *supra*. Therefore, that decision is now final.

The appellants at first asserted that they would be willing to accept a 20-year or even a 15-year lease. This was scaled down later to a request for a 10-year lease, or at least an option by the lessees to renew. The appellants also assert that the refusal to allow them to construct a carport on the tract is unreasonable.

A memorandum from the District Manager, Folsom, dated November 16, 1967, contains a recommendation to offer a 5-year lease "renewable upon Bureau option only." This memorandum also notes that although the applicants eventually intend to retire on the site, they were, "not living on the tract at the time of the offer, and a lease of longer duration would be inconsistent with other actions taken in this area to resolve unauthorized occupancy." As to the construction of a carport, it is apparent that an additional structure would compound the problems incident to the occupancy of this tract and increase the hardship to the appellants if it eventually becomes necessary to terminate the lease.

The recommendations of the District Manager appear to have been well considered. It is not unreasonable for the Bureau to reserve the right of renewal depending upon the nature and classification of the land and the anticipated future need for exclusive control of the premises to meet the management objectives for which the Bureau is responsible.

The land is located within the Amador-Calaveras Type II Planning Unit of the Southern Mother Lode Resource Area, Folsom Pilot District. The land is part of a 570-acre timber management area carried on the district inventory, which has been identified as suitable for classification for retention and multiple use management by the Federal government under the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411-18).

Accordingly, the action of the Land Office is affirmed and the appellants' petition for additional relief is denied.

Virgil C. and Lucy M. Boudreau are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures

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OPD
Appeals List No. 1
MHS

appeal to Sec
affirmed A-30976 3-14-69

Mining Claim Occupancy Act: Applications 2215.2

The act of October 23, 1962, requires that an applicant or his predecessors must have occupied valuable improvements on the claim as a principal place of residence for a 7-year period immediately preceding July 23, 1962; therefore, an application that does not meet this requirement must be rejected.

Mildred L. Cox, Sacramento 1070 (March 11, 1968)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1968 MAR 15 PM 2 52

In reply refer to:
704
Sacramento 1070

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

March 11, 1968

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DECISION

Mildred L. Cox : Mining Claim Occupancy

Decision Affirmed as Modified

Mildred L. Cox has appealed from a decision of the Sacramento Land Office, dated December 22, 1967, rejecting her application to purchase a portion of the Monarch #4 mining claim under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. §§ 701-709 (1964). The claim is located in the Sequoia National Forest. The stated reason for rejecting her application is that she had not occupied the claim as a principal place of residence in the manner required by law, namely, no improvements were constructed on the land, pursuant to 43 CFR 2215.0-5(a) and (d).

The appellant admitted in her application that there were no improvements on the Monarch #4 mining claim. However, she has stated in that application that there are improvements on the Monarch #2 mining claim and that because the land in that claim is "to be totally enveloped by the new Freeway," she wants to move the improvements, now located on Monarch #2, to a tract of land on Monarch #4. The appellant submitted several photographs with her application showing that there are three cabins, a quonset hut, a shower house and a stamp mill on the claim; presumably, Monarch #2.

Departmental regulation 43 CFR 2215.4 does make provision, under certain circumstances, for an alternate tract. Consequently, if the appellant or her predecessors in interest, who have had the mining claims in their family since 1932, had fully complied with the requirements of the law, it would have been within the discretionary powers of the Secretary of the Interior and the Secretary of Agriculture, respectively, to approve the application.

The appellant admits that her father-in-law who had occupied the land for 11 years "has been deceased for many years". Mrs. Cox also admits that she is unable to locate her brother-in-law, who had lived on the claim for 10 years with his father. She also states that:

> * * * My late husband and myself also spent years there, if you consider his spending every free day he had including his vacations on the claims. * * *.

Mrs. Cox then expresses the hope that:

> Possibly the law is written partially to reward those who put forth a great amount of work and time on their land and when the time comes they are awarded a small part of their total land if they can afford it, * * *.

The law has been long established by the United States Supreme Court, that no rights in public lands can be granted in the absence of an act of Congress giving recognition thereto. *Sparks* v. *Pierce*, 115 U.S. 408 (1885). Therefore, Mrs. Cox's rights, if any, must be considered in light of the provisions of the Mining Claim Occupancy Act, *supra*.

In a very recent decision in which the Department interpreted Section 2 of the Mining Claim Occupancy Act, it was noted that one of the two requirements of that section is that the applicant and his predecessors must have occupied the improvements on the land for not less than seven years *immediately* prior to July 23, 1962. The substance of the provision is that intermittent or sporadic use or occupancy, during this seven year period, for any purpose while concurrent residence is maintained at a regular place of domicile elsewhere, is not qualifying under the act. *Henry P. and Leoda M. Smith*, 74 I.D. 378, 382, 384 (1967) and the cases cited therein.

It appears that the alleged full-time residential occupancy by appellant's father-in-law and brother-in-law occurred long prior to the seven year period immediately preceding July 23, 1962, and that the intermittant use by her late husband was not of a qualifying character.

Accordingly, the decision of the Land Office, as herein modified, is affirmed.

Mildred L. Cox is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

In the event of an appeal the adverse party to be served is:

Regional Forester, California Region
U. S. Forest Service
630 Sansome Street
San Francisco, California 94111

Edward W. Stiebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures

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Mrs. Mildred L. Cox (Certified Mail)
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Division of Watershed Management, Forest Service, Washington, D. C. (12)
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Div. of L&M PM (2)
OPD
Appeals List No. 1
MHS

appeal to Sec A-31000
Dismissed 6-28-68

Mining Claim Occupancy Act: Generally 2215

Where a Land Office decision rejects an application to purchase under the Mining Claim Occupancy Act and the appellant does not dispute this ruling, but requests a lease instead and the record shows that the cabin on the claim is in substandard condition and may be hazardous to human life, the Land Office decision will be affirmed and the request for a lease will be rejected.

Roxie I. L. Daniel, Sacramento 732 (May 3, 1968)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1968 MAY 17 AM 10 00

n reply refer to:
704
Sacramento 732

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

May 3, 1968

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DECISION

Roxie I. L. Daniel : Mining Claim Occupancy
:

Decision Affirmed
Request for Lease Rejected

Roxie I. L. Daniel has appealed from a decision of the Sacramento Land Office, dated March 7, 1968, rejecting her application to purchase a portion of the Jasper Quartz Lode mining claim under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. § 701-709 (1964). The stated reason for rejecting her application is that she has not occupied the claim as a principal place of residence as required by law and the departmental regulations thereunder.

The appellant does not dispute the Land Office ruling that she had not occupied the claim as a principal place of residence. However, she does contend that since the Government has no immediate need for the use of the subject tract, there is no reason why she shouldn't be given a lease during her lifetime (she is now 83 years of age), or until such time as the land is needed by the Government.

A county inspection of the appellant's improvements show the following:

1. Lack of sanitation facilities and water supply.

2. General Delapidation.

3. Structural members deteriorated and inadequate.

4. Hazardous Wiring.

The record also shows that the appellant owns a home in Fresno, California, to which she is essentially restricted because of an arthritic ailment. She also owns two flats in San Francisco where she ordinarily spends one or two months a year. She admits that she has, since purchasing the claim in 1962, occupied the cabin for a total of only one month each year.

A field report states that the subject tract lies in a zone of scenic or recreation significance; its best use is for multiple-use management for the benefit of the general public; and the subject site is particularly important for providing access to the remainder of the 1,560 acre block of land.

The principle reason for affirming the rejection of appellant's application is that she simply cannot qualify under the statutory requirements relating

to residence. Therefore, no relief can be afforded her under the authority of that statute. On other occasions where such rejection would work an extreme hardship on the claimant, it has sometimes been possible to provide limited tenure under the authority of some other law. However, in this instance it is apparent that appellant will suffer no physical deprivation and very little, if any, economic hardship by the denial of her request for an accommodation lease. On the contrary, the hazardous electric wiring and the general sub-standard condition of the cabin is a sufficient reason for terminating any and all occupation of the cabin and its removal from the land.

Accordingly, the decision is affirmed and the request for an accommodation lease is rejected.

Roxie I. L. Daniel is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stiebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

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OPD
Appeals List No. 1
MHS

appeal to be

Mining Claim Occupancy Act: Qualified Applicants 2215.0-5

An application to purchase under the Mining Claim Occupancy Act is properly rejected where the applicant has been operating a combination bar and restaurant and other business enterprises since 1955 on a mining claim which has been declared null and void because it was located on withdrawn land, and the applicant's residential occupancy was determined to be only incidental to the operation of the business enterprises.

Freda Turner, Sacramento 078851 (May 15, 1968)

In reply refer to:
704
Sacramento 078851

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

May 15, 1968

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DECISION

Freda Turner : Mining Claim Occupancy
:
:

Decision Affirmed

Freda Turner has appealed from a decision of the Sacramento Land Office, dated March 1, 1968, declaring her Lucky No. 1 mining claim null and void ab initio and rejecting her application to purchase a portion of the claim under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. § 701-709 (1964). 1/ The stated reasons for rejecting her application are as follows:

> 1. The subject land has been withdrawn from mining location and entry since June 8, 1926, by an Executive Order of that date. Therefore, the mining claim is null and void ab initio.
>
> 2. The applicant has maintained a combination bar and restaurant and other business enterprises on the land since 1955 and her residential occupancy during this period was determined to be only incidental to the operation of the business enterprises. 2/ The legislative intent under the 1962 Act, as evidenced by a U.S. Senate Conference Report No. 1984, dated August 30, 1962 shows, on page 6 thereof that, "The use of the property for commercial purposes not connected with previous efforts to extract minerals, in addition to residence would not be covered by this act * * * . The establishment of taverns, restaurants, stores and offices, for example, is not intended to be regularized by this legislation * * * ." Therefore, the applicant's use of the land cannot be legalized under the Act. (emphasis added).

1/ This decision did, however, offer Mrs. Turner an accommodation special land-use permit for 2 years at $140 per year on the condition that she pay the 2 year rental in advance and that she pay or sign a note agreeing to pay $2,400 in trespass charges for the unauthorized use of the land from 1949 through 1967.

2/ The appellant also resided on the claim from 1949 through 1954.

The appellant alleges as follows on appeal:

> The action proposed by said decision is an unconstitutional taking of applicant's right, title and interest to a mining claim and that applicant is entitled to compensation for the taking of her mining claim.
>
> That the decision was reached by improper procedural means, including, but not limited to:
>
> > (A) Applicant is informed and believes, and upon such information and belief alleges the fact to be that material evidence was received and considered by the adjudication officer, all of which evidence substantially influenced his decision to deny applicant's application, and none of which was set forth in said decision. That as a consequence thereof applicant was not afforded an opportunity to offer matters in rebuttal to said aforementioned matters.
> >
> > (B) That applicant was not afforded an opportunity to be heard upon her application and present evidence in her behalf upon same.
> >
> > (C) That said decision has been materially influenced by reason of bias and prejudice against applicant.

The appellant also requests a hearing in order to present evidence upon issues of fact she has set forth above as her basis for appeal.

The decision appealed from states, in part, as follows:

> * * *If an appeal is filed the appellant will have the burden of proving by presenting positive and substantial evidence wherein the decision appealed from is in error.

The Department has consistently held that a person who avails himself of the privilege of submitting his grievance for adjudication is properly required to assume the burden of pointing out clearly the basis of his claim that an error detrimental to him has been committed. United States and Salt Lake City v. Wayne E. Watrons, A-27759 (May 15, 1959). Thus, an appeal which merely states that the decision appealed from is contrary to the law and the facts and fails to allege facts or present any evidence in support of his allegation of error, is subject to dismissal. Edward G. Gee, A-30042 (August 26, 1963); Maria Fischer, A-30314 (June 7, 1965).

An interest in public lands can only be acquired under acts of Congress which authorize the acquisition of such an interest. *Deffeback* v. *Hawks*, 115 U.S. 392, 407 (1885). The Department has repeatedly ruled that a mining claim located on land which is not open to such location confers no rights on the locator and is properly declared null and void *ab initio*, and where the records show that the land was not open to mining location at the time such a location was attempted, a hearing is not required to establish the invalidity of the claim. *David W. Harper et al.*, 74 I.D. 141, 145 (1967), and cases cited therein. The appellant's attention is also invited to that part of page 6 of the Senate conference report, *supra*, which states:

> The applicant must be one whose residence stems from a *lawfully* filed and occupied mining claim or one whose occupancy has the *color of law* due to a claim of title * * * . (emphasis added).

Therefore, since the appellant does not deny that the subject tract has been barred from mineral location since 1926, and since she has submitted no evidence showing that she has occupied this public land under any color of law, it must follow that she is and has been a trespasser upon the public land since 1949.

There is no merit to the assertion that material evidence has been withheld by the adjudication officer of the Land Office. On the contrary, every material aspect of the withdrawal has been set out in the decision and the appellant has made no attempt to show wherein it is not correct.

The appellant's unsupported charge of "bias and prejudice" can be given no consideration.

The appellant has failed to allege any facts which, if proven, would entitle her to the relief she seeks; therefore, her request for a hearing is denied. *Jack A. Walker*, A-30492 (April 28, 1966).

Accordingly, the decision is affirmed.

Freda Turner is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
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Mrs. Freda Turner
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Div. of L&M PM (2)
OPD
Appeals List No. 1
MHS

Mining Claim Occupancy Act: Qualified Applicant 2215.0-5

Where the use of the cabin on the claim has been only casual and intermittent, it does not constitute "a principal place of residence" within the meaning of the 1962 Act, and an application for conveyance of land based on such use is properly rejected.

Mrs. Josephine Bobo, successor to Theodore Caprara, Sacramento 1036 (May 24, 1968)

DEPT. OF INTERIOR
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1968 JUN 24 AM 10 00

In reply refer to:
704
Sacramento 1036

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

May 24, 1968

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DECISION

Josephine Bobo, successor to :
Theodore Caprara :

Mining Claim Occupancy

Decision Affirmed

On October 11, 1967, Theodore Caprara filed application to purchase lot 9, sec. 27, T. 15 N., R. 10 E., Mount Diablo Meridian, California, under the Act of October 23, 1962 (76 Stat. 1127). On the same date he also filed his relinquishment of the Shelby Placer mining claim on this land. Mrs. Josephine Bobo, sister of the applicant, succeeded to his interest upon the applicant's death on November 16, 1967.

By decision of March 25, 1968, the Land Office, Sacramento, rejected the application because the applicant was not qualified under the Act, supra, since the claim did not constitute a principal place of residence for him and he was not a residential occupant-owner of valuable improvements on the critical date. Mrs. Bobo has timely appealed from this decision.

The record shows that Mr. Caprara maintained a full-time residence in Novato, California, from 1956 until his retirement in September 1967, and that his use of the cabin on the claim was casual and intermittent. The report of the field examination by the Bureau's realty specialist indicates that there were only occasional periods of occupancy by Mr. Caprara, and that he maintained his home in Novato. The data submitted by Mrs. Bobo in her appeal fails to refute the facts of her brother's full-time residence in Novato, and that his visits to the cabin were only casual and intermittent.

The regulations, 43 CFR 2215.0-5(a) and (d), require that a qualified applicant under the 1962 Act be a residential occupant-owner, as of October 23, 1962, of valuable improvements on an unpatented mining claim. The Department has consistently held that a cabin which is used only intermittently, even though used at frequent intervals during the year, does not constitute "a principal place of residence" within the meaning of the 1962 Act, and an application for conveyance of land based on such use is properly rejected. H. T. Crandall, 72 I.D. 431 (1965); Christian E. Wicks, 73 I.D. 166 (1966); Stanley C. Haynes, 73 I.D. 373 (1966); Henry P. and Leoda M. Smith, 74 I.D. 378 (1967).

Moreover, the record includes a letter dated December 5, 1967, from the Chief Building Inspector, Placer County Department of Public Works, in which he describes the results of an inspection by his department of three cabins, one of which is the Caprara cabin. The letter states, in pertinent part:

> It is our finding that these cabins are all substandard under the State Housing Code and under our County Housing Code for the following reasons:
>
> 1. Inadequate sanitation, which includes lack of any bath or water closet facilities, no hot water, improper kitchen sink, improper heating facilities, and otherwise inadequate sanitation.
>
> 2. Structural hazard - no foundations and inadequate maintenance.
>
> 3. Are considered nuisances as defined in the Code.
>
> We, therefore, would recommend that these buildings be demolished as it would be almost impossible, in our opinion, to bring them up to standard.

Even though it could be demonstrated that Mr. Caprara was a qualified applicant under the law, which has not been done, the conditions described in the report would constitute sufficient reason for denying any extension of tenure.

Accordingly, the decision of the Land Office is affirmed.

Mrs. Bobo is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stuebing
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SACRAMENTO LAND OFFICE

1968 AUG 2 AM 10 00

Riverside 899, etc.

CARL J. AND MARIAN P. MEDFORD
AND OTHERS

Approved July 22, 1968

Mining Claim Occupancy Act: Qualified Applicants

The act of October 23, 1962, does not apply to occupants of mining claims which were invalidated prior to the date of enactment of that Act, and occupants of such claims are not entitled to the benefits thereof.

In reply refer to:
704
Riverside 899, etc.

July 10, 1968

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

DECISION

Carl J. and Marian P. Medford : Mining Claims Occupancy
and others :
:

Decisions Affirmed

The following applications were filed to acquire lands in lot 3 sec. 29 T. 15 S., R. 36 E., M.D.M., California, under the act of October 23, 1962, as amended (76 Stat. 1127; 30 U.S.C. 701-709):

Carl J. and Marian P. Medford (Emily May quartz claim)	Riverside 899	Filed	September 20, 1967
Evelyn Eaton (Sadie Lode claim)	Riverside 952	"	October 11, 1967
James M. and Eleanor M. Hughes (Hansen Placer claim)	Riverside 1068	"	October 23, 1967

These applications were rejected by the Riverside District and Land Office on February 28, April 8, and March 28, 1968, respectively, because the claimants were not qualified applicants, having filed as occupants of mining claims which had been declared null and void before the enactment of the 1962 Act, supra. The first two claimants have filed appeals from the decisions rejecting their applications, but Mr. and Mrs. Hughes have failed to submit a statement of reasons in connection with their notice of appeal from the rejection of their application.

Power Site Reserve No. 448 was established effective August 13, 1914, which withdrew lot 3 sec. 29, among other lands, from all forms of disposal, including the mining laws. The Emily May claim was located on May 26, 1939; the Sadie Lode on March 14, 1940; and the Hansen Placer on December 4, 1945. They were declared null and void on October 7, 1943; May 22, 1945; and May 24, 1945; respectively.

It has been held that the act of October 23, 1962, does not apply to occupants of mining claims which were invalidated prior to the date of enactment of that Act, and occupants of such claims are not entitled to the benefits thereof. Grady L. Johnson, et al., 72 I.D. 436 (1965); Jessie D. Blue and Phillip D. Blue, A-30050 (November 30, 1965); Claude M. and Lenore E. Murphy, A-30174 (November 30, 1965).

Since the 1962 Act does not apply to these appellants and they are not entitled to the benefits thereof, the decisions of the Riverside office were correct in rejecting these applications, and they are affirmed.

Moreover, the appeal of Eleanor M. Hughes is fatally defective in that she filed no statement of reasons in support of her appeal within the period prescribed by 43 CFR 1842.5-1. Summary dismissal is mandatory in such cases, and her appeal is dismissed. 43 CFR 1840.0-7(a).

This decision constitutes a final administrative determination by the Department in this matter. 43 CFR 1844.1.

Boyd L. Rasmussen
Director

Approved: July 22, 1968

Secretary of the Interior

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Smith and Summers, Attorneys at Law (Certified Mail)
SD (Sacramento)
DLO (Riverside)
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OPD
Appeals List No. 1

Mining Claim Occupancy Act: Interest Conveyed 2215.0-3(a)

The Act of October 23, 1962, grants discretionary authority to the Secretary of the Interior or his delegate to determine whether a fee title or a lesser estate in land will be granted to a qualified applicant under the Act, and the terms of the estate to be granted.

Henry Loehden, Sacramento 080300 (August 15, 1968)

DEP'T. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1968 AUG 26 AM 10 00

In reply refer to:
704
Sacramento 080300

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

August 15, 1968

CERTIFIED MAIL
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DECISION

Henry Loehden : Mining Claim Occupancy Act
:

Decision Affirmed as Modified

Based on the recommendation of the Bureau of Reclamation, by letter-decision of January 25, 1968, the Sacramento Land Office offered Mr. Henry Loehden a two-year non-renewable lease on land he has occupied, pursuant to the Act of October 23, 1962 (76 Stat. 1127) and the regulations, 43 CFR 2215. The land desired is a portion of the NW¼SE¼NW¼ sec. 24, T. 13 N., R. 9 E., M.D.M., California, described in the proposed lease by metes and bounds, containing 0.93 acre.

Mr. Loehden has appealed from this decision, requesting a larger tract and a longer term of use and occupancy thereof. The appellant has offered justification for the granting of greater tenure than that allowed by the decision of the Sacramento office, pursuant to the recommendation of the Bureau of Reclamation. He has submitted a general statement as to the improvements he has placed on the land, and has requested that he be allowed an additional 100 feet north of the present north line of the tract offered him, in order to encompass the spring he has developed for his source of domestic water.

The tract in question is part of a larger area withdrawn for the Bureau of Reclamation, and is in the Auburn Reservoir Project area. It has been determined that it is in the best public interest to retain the land in Federal ownership for multiple use management, and for its value for recreational purposes in connection with the Auburn Reservoir Project of the Bureau of Reclamation.

Appellant has occupied the premises as his sole place of residence since 1949, and he has been employed nearby at the same box factory since 1950.

The 1962 Act, supra, and the regulation, 43 CFR 2215.0-3, grant discretionary authority to the Secretary of the Interior or his delegate to determine whether a fee title or a lesser estate in the land will be granted, and the terms of the estate to be granted. John Buford Wels, Cora Wels, Oregon 013619 (February 12, 1965). In connection with this appeal, the Bureau of Reclamation was consulted, and discussions were had with that Bureau's Land and Recreation

Branch, Division of Water and Land Operations, and the Chief of Real Estate, Auburn Project office. It has been agreed that a greater tenure may be offered the appellant than that originally recommended and offered him by the letter-decision of January 25, 1968.

Accordingly, the lease offer of January 25, 1968, is modified so that a lease may be offered the appellant for a two-year initial period, with the option for renewal of the lease for additional two-year periods provided that the lease may be terminated by this Department, after due notice to the lessee, at such time as the land is actually needed for use in connection with the Auburn Project. Consideration should also be given the extension of the leased area to include so much of the land north of the presently considered north line as will give the lessee access to and use of the improved spring which is his source of domestic water. If not feasible to include this additional area in the lease, a special use permit might otherwise be appropriate.

The decision of the Sacramento Land Office is modified to that extent. When this decision becomes final, the case record will be returned to that office for action consistent herewith.

Mr. Loehden is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Mrs. H. S. Gilmore (Certified Mail)
Div. of L&M S&T (4)
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OPD
Appeals List No. 1

mcoA

Mining Claim Occupancy Act: Qualified Applicants 2215.0-5

In the absence of substantial evidence showing that maximum tenure of a lease under the Mining Claim Occupancy Act is not consistent with the public interest and that the 1.57 acres of land involved is needed for a public program, a decision offering a mining claim occupancy applicant a non-renewable 5-year lease will be set aside.

Joe R. Coughlin, Sacramento 504 (September 9, 1968)

In reply refer to;
704
Sacramento 504

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

September 9, 1968
CERTIFIED MAIL
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DECISION

Joe R. Coughlin : Mining Claim Occupancy
:

Decision Set Aside in Part
Case Remanded

Joe R. Coughlin has appealed from a decision of the Sacramento Land Office, dated June 6, 1968, offering him a 5-year nonrenewable lease for 1.57 acres of land in the relinquished Silver Dollar Mining Claim at an annual rental of $156, under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. § 701-709 (1964). This decision, in effect, rejected the appellant's application to purchase 5 acres of the land for the reason that it is in the public interest to retain the land because it is an integral part of a large block of public domain which is in a 570-acre timber management area where reforestation and insect control efforts have already been made. Also, the land has a high recreation potential and is located in an area which is part of a critical winter deer range and which supports a good resident deer population. The decision also held that the fair market value of the land is $3,000 and the value of the appellant's equities is $400. Thus, the annual rental was set at 6% of $2,600.

The appellant alleges:

1. That he should be allowed to purchase the 5 acres for which he has applied;

2. That the appraisal is too high when considered in light of the bill approved by the House of Representatives providing home ownership for ghetto dwellers; and

3. That he should also be allowed to maintain the second house on the east side of the road as well as the one on the west side of the road.

Departmental regulation 43 CFR 2215.0-3(a) authorizes the Secretary to convey an interest of "not more than (1) five acres, or (2) the acreage actually occupied by him, whichever is less." The appellant has submitted no probative evidence showing that he is occupying more than the 1.57 acres offered to him. Therefore, the request to acquire more than 1.57 acres must be denied.

It is not permissible to use extraneous materials that are inconsistent with the regulations in making a current fair market value appraisal. Depart-

mental regulation 43 CFR 2215.0-3(c) requires the Secretary to charge fair market value, less the equities of the applicant and his predecessors in interest. This the Land Office has done and the appellant has submitted no substantial evidence showing that the market value and the allowed equities are not correct. Therefore, there is no merit to the appellant's objection to the appraisal.

A report from the Amador County Department of Plans and Inspections, dated April 1, 1968, states that the vacant house on the east side of the road is beyond repair for human occupancy because of age, deterioration, and lack of a suitable foundation. This report recommends that the building be razed and the lot cleaned up. It also states that the cabin located on the west side of the road occupied by Mr. and Mrs. Coughlin is in an acceptable state of repair. Accordingly, the house on the east side of the road cannot be considered as a "valuable improvement" under the Act, supra. Therefore, the request for permission to maintain this second house on the land is denied. Christian E. Wicks, 73 I.D. 166 (1966).

Departmental regulation 2215.0-2(a) states:

> The program of the Secretary of the Interior in the administration of the Act is to grant qualified applicants maximum tenure consistent with the public interest * * * . Where the public interest does not permit sale of a fee simple interest, the period of tenure granted will ordinarily not terminate until the land is needed for a public program, * * * .

Although the well-documented recitals of public values in the case file fully evince the need to retain this land in public ownership, there is nothing in the record to show that the past or present occupancy by the appellant has had a deleterious effect on the public values. Likewise, there is nothing in the record showing that a renewal lease, after the initial five-year period, would be inconsistent with the public interest or that the land will be needed at that time for some public program which is not compatible with the continued leasing of the premises for residential use. Therefore, the determination that the lease should not be renewable is set aside, and an application for a renewal of the lease at the expiration of the initial five year term will be accepted and considered in the light of the circumstances which then prevail.

Accordingly, the decision is affirmed in part, set aside in part, and remanded for further action consistent herewith.

Joe R. Coughlin is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the

Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Newton Frishberg
Chief, Office of Appeals
and Hearings

Enclosures 2

DISTRIBUTION:
H. S. Gilmore (Certified Mail)
Joe R. Coughlin
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1

appeal to Sec
affirmed A-31071-1-16-70

Mining Claim Occupancy Act: Qualified Applicant 2215.0-5

Where the use of the cabin on the claim has been only casual and intermittent, it does not constitute a "principal place of residence" within the meaning of the 1962 Act, and an application for conveyance of land based on such use is properly rejected.

Charles H. and Bernice I. Waugaman, Sacramento 481, 482 (September 25, 1968)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1968 OCT 7 AM 10 00

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In reply refer to:
704
Sacramento 481, 482

September 25, 1968

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DECISION

Charles H. and Bernice I. Waugaman : Mining Claim Occupancy
:
:

Decision Affirmed

By decision of January 8, 1968, the Sacramento Land Office rejected the above-cited application for a fee conveyance under the Mining Claim Occupancy Act of 1962, 76 Stat. 1127, as amended, for land in sec. 35, T. 38 N., R. 9 W., M.D.M., California, because the applicants were not residential occupant-owners of the land as a principal place of residence.

In their appeal, Mr. and Mrs. Waugaman referred to the time and effort they had spent on the claim, and asked that they be granted a lifetime tenure or a lease, in lieu of the fee title originally applied for and rejected.

The record, including statements made by the appellants, shows that they occupied the claim only intermittently. They said: "We would be there in the Spring for 3 or 4 weeks, then again for 6 weeks (July and August), then again in Oct.-Nov. for several weeks * * *. I work as a longshoreman in San Francisco and have so since 1931 * * *." The record further shows that the appellants maintain a permanent home in San Francisco, and that the husband is bound there by his employment and the need to earn a living.

The regulations, 43 CFR 2215.0-5(a) and (d), require that a qualified applicant under the 1962 Act must be a residential occupant-owner, as of October 23, 1962, of valuable improvements on an unpatented mining claim. The Department has consistently held that a cabin which is used only intermittently, even though used at frequent intervals during the year, does not constitute " a principal place of residence" within the meaning of the Act, and an application for conveyance of land based on such use is properly rejected. H. T. Crandall, 72 I.D. 431 (1965); Christian E. Wicks, 73 I.D. 166(1966); Stanley C. Haynes, 73 I.D. 373 (1966); Henry P. and Leoda M. Smith, 74 I.D. 378 (1967); Eveline and John Anthony Schaefer, A-30901 (May 21, 1968).

The land in question is within the Shasta National Forest, and is under the jurisdiction of the U. S. Forest Service, Department of Agriculture. The regulations, and the 1962 Act itself, provide that when the land applied for is withdrawn in aid of the function of a Federal department or agency other than the Department of the Interior, the Secretary of the Interior may convey

an interest therein only with the consent of the head of the governmental unit concerned and under such terms and conditions as said head may deem necessary. Consultation with officials of the U. S. Forest Service has elicited the response that no consent will be given to life tenure or lease, as requested by the appellants.

Since the appellants are not qualified as residential occupant-owners, they are not entitled to any relief under the 1962 Act. Accordingly, the decision of the Sacramento Land Office was correct and is affirmed.

Mr. and Mrs. Waugaman are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION
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Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
OPD

appeal to Sec
affirmed A-31076 12-30-68

Mining Claim Occupancy Act: Generally 2215
Small Tract Act: Generally 2233

Where a Land Office decision, after rejecting an application under the Mining Claim Occupancy Act, offers the applicant a non-renewable 5-year small tract lease and a recent Bureau decision shows that under similar circumstances another applicant was offered a 5-year small tract lease which is renewable upon Bureau option for land in the identical planning unit, the terms and duration of the appellant's lease should be consistent with others in the same area to insure impartial treatment.

Roscoe C. Zink, Sacramento 078673 (October 3, 1968)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1968 OCT 14 AM 10 00

In reply refer to:
704
Sacramento 078673

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

October 3, 1968

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Roscoe C. Zink :
:
:

Mining Claim Occupancy
Small Tract

Petition for Additional Relief Granted in Part

The appeal by Roscoe C. Zink from a decision of the Sacramento Land Office, dated July 30, 1968, is essentially a petition for additional relief. The land office decision had rejected the appellant's application under the Mining Claim Occupancy Act of October 12, 1962, 30 U.S.C. 701-709, for land located in the former Lucky Strike Lode Mining Claim and offered him, as an accommodation, a non-renewable 5-year small tract lease under the Act of June 1, 1938. The appellant does not dispute the Land Office ruling that he is not qualified for relief under the Mining Claim Occupancy Act, supra. Therefore, that decision is now final.

The appellant alleges as follows:

1. He has invested approximately $6,000 on the improvements on the land.

2. It is not equitable or reasonable to offer him a non-renewable lease when the plans for the development of the area for public recreation are only tentative and may never be realized.

3. He should be allowed the option to purchase the desired land if the Bureau's tentative plans are never developed.

The appellant enclosed some color photographs with his reasons for appeal showing the inside and outside of his home on the land.

The issue in this case is somewhat similar to the case recently considered by this office and identified as Virgil C. and Lucy M. Bondreau, Sacramento 080117 (February 14, 1968). The only real difference between the Bondreau decision and the decision in this case is that Bondreau was offered a 5-year lease "renewable upon Bureau Option only." There is nothing in the case record showing that development of the area is imminent. It is noted that the land in the Bondreau case "is located within the Amador-Calaveras Type II Planning Unit of the Southern Mother Lode Resource Area, Folsom Pilot

District" and that the land involved in this appeal is also located in the identical planning unit area. Therefore, in order to insure impartial treatment of all of the applicants similarly situated, it is only proper that the appellant be offered a 5-year lease renewable upon Bureau Option only. However, since the land is located within the boundaries of the planning unit, the appellant's petition for an option to purchase cannot be allowed.

Accordingly, the action of the Land Office is affirmed as herein modified and the appellant's petition for additional relief in the form of an option to purchase is denied.

Roscoe C. Zink is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Roscoe C. Zink (Certified Mail)
Div. of L&M S&T (4)
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OPD
Appeals List No. 1

Mining Claim Occupancy Act: Qualified Applicants 2215.0-5

Section 2 of the Mining Claim Occupancy Act of October 23, 1962, provides that for the purposes of the Act, a qualified applicant is a residential occupant-owner of valuable improvements in an unpatented mining claim "as of the date of enactment of this Act." Therefore, an application filed by one who purchased a mining claim in 1966, is properly rejected.

Samuel and Elouise Morgan, Riverside 1060 (October 14, 1968)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1968 OCT 28 AM 10 00

In reply refer to:
704
Riverside 1060

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

October 14, 1968

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Samuel and Elouise Morgan : Mining Claim Occupancy
:
:

Decision Affirmed

Mr. and Mrs. Morgan have appealed from a decision of the Riverside District and Land Office, dated August 19, 1968, rejecting their application to purchase a portion of the Mount Olivet #1 Mining Claim, under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. § 701-709 (1964) for the reason that they were not residential occupant-owners of their mining claim as of the date of the Act and, therefore, they do not qualify. The decision states that the land involved has been withdrawn since 1931 under the Reclamation Act of June 17, 1902, and is not subject to appropriation or location under the mining laws. The decision also states that the said lands are being administered by the Lower Colorado River Land Use office under the provisions of the Lower Colorado River Land Use Plan and by the Bureau of Reclamation for programs of that agency. The decision informs the applicant that the rejection of their application is without prejudice to their right to apply to the Administrator of that office for a land use permit.

The appellants allege that they claim all of the rights and interests of their predecessors-in-interest of the mining claim. They also state that they have "filed a Declaration of Homestead."

It is apparent that the appellants do not understand the nature and scope of the public land laws as they apply to their particular situation.

The Mining Claim Occupancy Act does not recognize any property rights in the occupants of unpatented mining claims. Evelyn and John Anthony Schaefer, A-30901 (May 21, 1968). On the contrary, the Act specifically states in Section 1 thereof that it applies to claims which have been "determined * * * to be invalid." Moreover, since the claim was located after 1931, which is to say that the claim was located after the land had been withdrawn from appropriation and location under the mining laws, the claim was null and void from its inception. See Grace Kinsela, 74 I.D. 386 (1967). Therefore, the appellants' reference to their claim of title is not relevant to the issue in this case.

The meaning of appellants' assertion of a "Declaration of Homestead" is not clear. However, if they intend it to constitute, in effect, a claim of settlement rights in public land, it will not serve. Generally speaking, all vacant public lands have, with certain exceptions not material here, been withdrawn from entry, selection, and location under the non-mineral land laws by Executive Order 6910 of November 26, 1934, and Executive Order 6964 of February 5, 1935, and amendments thereto and by Section 7 of the Act of June 28, 1934, 48 Stat. 1272 as amended, 43 U.S.C. 315f (1964). In addition, lands in a reclamation withdrawal are not available for homesteading. Philip Rex Kleitz, A-30315 (June 8, 1965).

Finally, the District and Land Office properly held that since the applicants did not acquire any interest in the mining claim or the improvements thereon until December 28, 1966, and since Section 2 of the Act, supra, specifically limits relief under the Act to a "residential occupant-owner," as of the date of the Act; namely, October 23, 1962, the applicants were, therefore, not qualified under the Act.

Accordingly, the decision is affirmed.

Mr. and Mrs. Morgan are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2

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Mr. & Mrs. S. E. Morgan (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1

appeal to Sec
set aside & remanded A-31084 1-27-70

Mining Claim Occupancy Act 2215.2

A cabin that is used on weekends and for short periods during the year does not constitute "a principal place of residence" under section 2 of the Act of October 23, 1962; therefore, an application for the conveyance of land based upon such use is properly rejected.

Frank O. and Dorothy B. O'Mea, Sacramento 662 (October 25, 1968)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1968 NOV 4 AM 10 00

In reply refer to:
704
Sacramento 662

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

October 25, 1968

CERTIFIED MAIL
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DECISION

Frank O. and Dorothy B. O'Mea : Mining Claim Occupancy
:
Decision Affirmed

Frank O. and Dorothy B. O'Mea have appealed from the Sacramento Land Office decision dated August 16, 1968, which rejected their application to purchase a portion of the Chaparral lode mining claim, located in the Stanislaus National Forest, under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. 701-709 (1964). The stated reason for the rejection is that the applicants made only intermittent use of the cabin and it was not a principal place of residence, as required by the Act. The decision cites departmental decision H. T. Crandell, 72 I.D. 431 (1965) in support of its ruling.

The appellants allege that they "were bona fide residents at the Chaparral Mining Claim", and in support of their allegation they cite certain California State court cases dealing with the general law of domicile, to the effect that, "even though he be bodily absent, his domicile continues there if such be his intention." They also assert that the "applicants spent every spare moment away from their employment at San Francisco" residing on their claim. In view of this, "it does not appear that the applicants could do anything more to indicate their desire and intention to establish their permanent residence" on the mining claim. The appellants have also requested a hearing.

The general law of domicile is not adequate to resolve the legal issue in this case. The Mining Claim Occupancy Act, as the Land Office decision clearly points out, grants relief only to those occupants of invalid mining claims who have resided on their claim as a "principal place of residence", and not intermittently. Evidence of appellants' desire and intention to make their residence there is insufficient to prove the fact of residence.

The appellants' own witnesses state that the appellants were seen on the claim mostly on weekends. The appellants' attention is again invited to the Department's Crandell decision, supra, where it states on pages 434 and 435 as follows:

> The legislative history strongly indicates that "a principal place of residence" must be in the nature of a home which the

> occupant leaves periodically only because adverse weather conditions or some similar circumstances makes it impossible or impractical for him to live there on a year-round basis. But however that may be, it seems clearly to exclude a place which a person repairs to on weekends and during vacations, while maintaining a regular home elsewhere.

See also departmental decision Herman C. and Edith O. Kampling, A-30592 (September 26, 1966) which held that where a cabin is used intermittently and another place of residence is maintained to which the applicants are bound at least by employment and the educational needs of their children, and not by reason of weather or topography, the application for conveyance is properly rejected.

The appellants have alleged no facts which, if proven, would entitle them to the relief they seek. Therefore, the request for a hearing is denied. Jack A. Walker, A-30492 (April 28, 1966).

This decision is without prejudice to the appellants' right to apply directly to the Regional Forester, U. S. Forest Service for a permit.

Accordingly, the decision is affirmed.

Frank O. and Dorothy B. O'Mea are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

In the event of an appeal, the adverse party to be served is:

Regional Forester
U.S. Forest Service
630 Sansome Street
San Francisco, California 94111

Edward W. Stuebing
Acting Chief, Office of Appeals
and Hearings

Enclosures 2

Dist. on page 3

DISTRIBUTION:
Gintjee, Chinn, and Wong, Attorneys at Law (Certified Mail)
Frank O. and Dorothy B. O'Mea
Hon. Harold T. Johnson, House of Representatives
Regional Forester, Forest Service, U.S. Department of Agriculture
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1

Appeals Procedure: Generally 1840 MCO A

Where the additional information required for the consideration of an application under the Mining Claim Occupancy Act is submitted on appeal, the appeal will be dismissed and the case will be remanded for further consideration.

Ray and Emerson Fenley, Riverside 1067 (November 13, 1968)

In reply refer to:
704
Riverside 1067
November 13, 1968

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

CERTIFIED MAIL
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DECISION

Ray Fenley : Mining Claim Occupancy
Emerson Fenley :

Appeal Dismissed
Case Remanded

Ray and Emerson Fenley have appealed from a decision of the Riverside District and Land Office, dated August 27, 1968, which held their application under the Mining Claim Occupancy Act of October 23, 1962, for rejection, pending the receipt of certain specified additional evidence within 30 days.

The appellants' statement of reasons for appeal consists entirely of the information requested and no exception has been taken to the requirement that the information be submitted. The appellants could have as easily submitted the information directly to the District and Land Office without having taken the appeal to the Director.

Therefore, since no issues need to be resolved the appeal is dismissed and the case is remanded to the State Director for further consideration.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

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Ray and Emerson Fenley (Certified Mail)
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1

Appeals Procedure: Summary Dismissal 1600.[illegible]

Where no statement of reasons is filed in support of an appeal, the appeal must be dismissed.

Charles [illegible] Hamilton, Riverside [illegible] (January 7, [illegible])

MCO A

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 JAN 23 AM 10 00

Appeals Procedure: Summary Dismissal 1840.0-7

Where no statement of reasons is filed in support of an appeal, the appeal must be dismissed.

Charles G. Donaldson, Riverside 1066 (January 7, 1969)

In reply refer to:
704
Riverside 1066

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

January 7, 1969

CERTIFIED MAIL
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DECISION

Charles G. Donaldson : Mining Claim Occupancy
:
Appeal Dismissed

By decision of October 2, 1968, the Riverside District and Land Office rejected the mining claim occupancy application of Charles G. Donaldson because he had failed to make a satisfactory showing that he is a qualified applicant for relief under the Mining Claim Occupancy Act (76 Stat. 1127; 30 U.S.C. 701-709).

A timely notice of appeal was filed, stating only that the decision appealed from is erroneous and deprives the applicant of due process of law. No statement of reasons was filed in support of the appeal, nor any evidence showing wherein the decision appealed from is in error.

The regulation, 43 CFR 1840.0-7, requires that an appeal be summarily dismissed when no statement of reasons is timely filed. The Department has also stated that an appeal will be dismissed when no statement of reasons is filed in support of the appeal. McLeod Ranch, A-30556 (February 4, 1966); Bertha L. Barnes, A-30688 (September 27, 1966).

Accordingly, the appeal of Charles G. Donaldson is dismissed.

Mr. Donaldson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2

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Div. of L&M PM (2)
OPD
Appeals List No. 1

Mining Claim Occupancy Act: Applications 2215.2

Where the applicant under the Mining Claim Occupancy Act admits that the dwelling house on the claim was not fit for human habitations and was not occupied as a principal place of residence for not less than seven years immediately prior to July 23, 1962, his application for relief is properly rejected.

Charles W. Strong, Sr., Riverside 1548 (February 13, 1969)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 FEB 24 AM 10 00

In reply refer to:
141
Riverside 1548

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

February 13, 1969

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Charles W. Strong, Sr. : Mining Claim Occupancy
:

Decision Affirmed

Charles W. Strong, Sr. has appealed from a decision of the Riverside District and Land Office, dated November 15, 1968, rejecting his application to purchase a portion of the Prince #1 and Prince #2 mining claims, located in the Sequoia National Forest, under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. 701-709 (1964), for the reason that he has not made a satisfactory showing that he had used the claim as a principal place of residence during the required period ending on October 23, 1962.

The appellant admits, in his statement of reasons for appeal, that when he acquired the claims on February 4, 1960, the building on the claims "could not be considered an acceptable human dwelling," and while he "could not say definitely" what day he started or finished the project of rebuilding the house to make it livable, he indicates that it covered the years 1960 thru 1963. The appellant states in considerable detail the difficulties he overcame in rebuilding and improving the place and he candidly admits, "I cannot say that it would be a financial hardship to lose the place. I believe I understand the implications of having a mining claim. However, I cannot rationalize nor reconcile the idea of tearing down that grand old cabin when so much work and effort have gone into building it into the delightfully livable structure it is today."

A very recent departmental decision, interpreting Section 2 of the Mining Claim Occupancy Act, takes note of two requirements of that section; one, that the applicant and his predecessors must have occupied the improvements on the land for not less than seven years immediately prior to July 23, 1962, and two, that he was a residential occupant-owner as of the date of the enactment of the Act which constitutes for him "a principal place of residence". Henry P. and Leada M. Smith, 74 I.D. 378, (1967). See also Mrs. B. F. Rorick, A-30399 (November 16, 1965). The Department has also held that "a principal place" as used in Section 2 of the Act, must include a presently habitable dwelling place as of the date of the Act. Christian E. Wicks, 73 I.D. 166 (1964). Therefore, since the appellant admits that the structure on the land was not habitable and he impliedly admits that the claim and the improvements were not occupied for not less than seven years immediately prior to July 23, 1962, this Bureau has no legal authority to grant the appellant any relief under the Act. Sparks v. Pierce, 115 U.S. 408 (1885).

Accordingly, the decision is affirmed.

Charles W. Strong, Sr. is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Charles W. Strong, Sr. (Certified Mail)
Division of Watershed Management, Forest Service, USDA (12)
300 (6)
200
Appeals List No. 1

Mining Claim Occupancy Act: Applications 2215.2

Where the appellants admit that poor road rather than adverse weather conditions made it impractical to live on their claim on a year-round basis and where the record shows that the applicants have a home elsewhere and occupied the mining claim on a limited basis, the decision rejecting the application to purchase will be affirmed.

Eugene P. and Margaret Tiscornia, Sacramento 608 (February 17, 1969)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 MAR 5 AM 10 00

In reply refer to:
141
Sacramento 608

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

February 17, 1969

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Eugene P. and Margaret Tiscornia : Mining Claim Occupancy
:

Decision Affirmed

Eugene P. and Margaret Tiscornia have appealed from a decision of the Sacramento Land Office, dated December 11, 1968, rejecting their application to purchase a portion of the Madaline Quartz Mining Claim, located in the Stanislaus National Forest. The stated reason for the adverse action is that a field examination and inquiries of the residents in the area of the claim indicate that the appellants used their cabin during vacations and weekends. The decision states that the claim is located at a low elevation and the roads would be accessible 90% of the year because snow is no problem. The decision also states that the appellants maintain their principal place of residence in Stockton, California. The decision cites departmental decisions Jack A. Walker, A-30492 (April 28, 1966) and H. T. Crandell, 72 I.D. 431 (1965) to support the ruling.

The appellant alleges as follows:

> 1. * * *. Prior to our occupancy, the said premises were occupied by the said Mr. Cunningham for some forty years, and prior to his occupancy, the same was occupied by his father for some forty years. * * *.
>
> 2. Considerable improvements have been made to the premises.
>
> 3. The residence located on this property lies approximately four (4) blocks in from the main highway. The three (3) other families mentioned in the decision live adjacent to the highway, and, therefore, the winter weather is no problem for them. During the rainy part of the winter months, the road leading from the highway to our residence makes access to the cabin impossible. On numerous occasions our car has become stuck in the mud and we have had to be towed out. I, Mr. EUGENE P. TISCORNIA, SR., spend on an average, when the road permits, approximately two (2) weeks out of every month during the year except during the rainy portion of the winter season. We would be willing to spend a reasonable sum to improve said road.

The appellant's own statement of reasons for appeal indicates that while his predecessors in interest had lived on the claim for approximately 80 years and his neighbors have been able to reside on their claims because they were located near the highway, the appellants were not able to do this because the rainy part of the winter month caused their car to become stuck in the mud. Apparently, this condition could have been cured but the appellants elected to instead spend their money by constructing an additional room to the cabin on the claim and adding a bathroom, water heater, concrete patio, two 1,000 gallon water tanks, 60 fruit trees, and a fence around the house. It appears, that had the claim been a principal place of residence, repair of the poor road condition would have been the item of primary concern. Obviously, the road was not the item of primary interest because use of the cabin on the claim was not essential. Actually, the Stockton home was the principal place of residence for the applicants from 1959 to 1962. Thus, at least to a significant extent, it was not the adverse weather conditions but the poor road condition that made it impractical to live on the claim on a year-round basis. As the decision stated, quoting from the *Walker*, decision, *supra*:

> * * * the purpose of the law is to preserve *homes* for qualified occupants of mining claims, places where they have lived for years and from which their forced removal because of the invalidity of the mining claims would be a real hardship. There was no solicitude expressed by the Congress for the person who has a home elsewhere and who merely occupied the mining claim on a limited basis or for a limited purpose. Such a person would not be uprooted from a *home* if denied the right to occupy the claim.

Accordingly, the decision is affirmed.

Eugene P. and Margaret Tiscornia are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2

Dist. on page 3

DISTRIBUTION:
Louis T. Arbios, Attorney at Law (Certified Mail)
Eugene P. and Margaret Tiscornia
Regional Forester, California Region, Forest Service, USDA
Division of Watershed Management, Forest Service, USDA (12)
300 (6)
200
Appeals List No. 1

Private Law 89-364: Appraisal

Where a private law authorizes the sale of lands and requires their appraisal as of the date of enactment of the law, and payment of the appraised price, plus administrative costs of the conveyance, the beneficiaries must pay the appraised price and administrative costs in order to acquire title to the lands.

Verna H. Ishmael, et al., Riverside 627, etc. **JUN 9 1969**

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 JUN 19 AM 10 00

In reply refer to:
141
Riverside 627, 628
629, 630

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

JUN 9 1969

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Verna H. Ishmael, George D.	:	Private Sale, Act of
Ishmael, Dolores G. Morris	:	October 15, 1966
Estate of Gwilym L. Morris	:	
	:	
	:	

Decision Affirmed as Modified

The act of October 15, 1966, 80 Stat. 1671, authorizes the issuance of patents to the above-named parties upon payment of the fair market value of the lands as of October 15, 1966 (less the value added to the lands by these beneficiaries), and the administrative costs of making the conveyance. The fair market value was originally determined to be $50 an acre or a total of $16,000, plus administrative costs of $192, for an aggregate price of $16,192 for each tract.

By decision of July 25, 1968, the Bureau's Riverside office approved the applications for patents, conditioned upon each party paying the sum of $16,192 within 90 days from the receipt of the decision. The applicants have appealed from this decision.

The appellants state that the decision failed to consider the mandate of the Congress as expressed in the 1966 Act, supra, and in the report of the House of Representatives on this legislation (H.R. Rep. 1800, 89th Cong., 2d Sess. 2 (1966)). They further claim that the conveyance should have been authorized without any payment, except the administrative costs, and that the decision attributed a fair market value of $500 an acre.

The appellants also requested a hearing to present oral testimony on the appraisal, or a suspense date to allow them time to submit written data on the appraisal. Additional time for submission of written data was granted, and an appraisal by an independent appraiser has been submitted on behalf of the appellants.

The House report, supra, stated in pertinent part that "The beneficiaries of the legislation are required to pay the fair market value of the land

* * * less any value added by them." The enacted law contains almost identical language: "* * * only after payment, * * * of (a) the fair market value of the lands * * * less the value added to the land by the beneficiary." (emphasis added) The record also shows that the appraisal of the lands was at the rate of $50 an acre, not $500, as alleged by the appellants.

The report of the Bureau's appraisal clearly shows that it was made in accordance with approved procedures and practices and was on the basis of the raw land and did not consider any value added by the appellants or any improvements they may have made thereto. Nevertheless, a reexamination of the land was made in the light of both the Bureau's original appraisal and that submitted by the appellants in connection with their appeal. In reconsidering all the factors it has been determined that the appraised value of the land is $40 an acre, or a total of $12,800 for each parcel. Adding to this the administrative costs of $192, the aggregate price for each parcel is $12,992. The Riverside office decision is modified to this extent.

It has been held that where an appraisal was made utilizing approved procedures and it reflects the fair market value, the burden is upon the appellant to prove by substantial, positive evidence that the appraisal is erroneous. Leon E. Reynaud, New Mexico 065443 (April 20, 1960). The record amply supports the view that the amount specified for the purchase price reflects the fair market value of the land, and that it is not excessive. See Gale DeWitt Spence, et al., Colorado 08371 (November 4, 1958). The appellant has not submitted any substantial, positive evidence proving that the appraisal is erroneous.

The appraisal of the land for which sale is authorized under the terms of a private law shall take into consideration that the law requires payment of the fair market value established as of the date of approval of the private law. Leo F. Reeves, Anchorage 034503 (January 7, 1966). The 1966 Act which authorized the sales here at issue requires payment of the fair market value of the land as of the date of its enactment, and this was considered in making the appraisal. Therefore, in order to acquire title to the lands, the appellants must pay the appraised price, as adjusted by this decision, plus the administrative costs of the conveyance.

The decision of the Riverside office is affirmed, as modified herein.

The appellants have the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be

strict compliance with the regulations. The appellant must show wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures

DISTRIBUTION:
Charles E. Ogle, Attorney at Law (Certified Mail)
300 (6)
200
Appeals List No. 1

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1969 JUN 19 AM 10 00

Mining Claim Occupancy Act: Generally 2215

Where it has been determined that a parcel of land, for which the appellant is offered a life-tenure occupancy lease, is a part of a large well-blocked area of public land having a number of resources which lend themselves to long term Federal management and which have been classified for retention for multiple-use management, an application for a fee title deed, instead of a lease, is properly denied.

William R. McGowan, Riverside 607 (July 28, 1969)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 AUG 8 AM 10 00

In reply refer to:
141
Riverside 607

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

July 28, 1969

CERTIFIED MAIL
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DECISION

William R. McGowan : Mining Claim Occupancy
:
:

Decision Affirmed

William R. McGowan has appealed from a decision of the Riverside District and Land Office, dated March 19, 1969, offering him a lifetime lease on 5 acres of public land for $178, upon relinquishment of the Model #1 Lode Mining Claim pursuant to the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127. In a letter to the appellant, dated April 11, 1969, the Land Office agreed to add the appellant's wife's name to the lease and to accept annual payments of $28 the first year and $25 per year over the next 6 years as payment in full. The appellant's offer to exchange the land for other land was denied for the reason that the subject tract is a "part of a large well-blocked area of public land having a number of resources which lend themselves to long term Federal management and which have been classified for retention for multiple use management under the Classification and Multiple Use Act of September 19, 1964".

The appellant alleges on appeal that since he is now 77 years of age he should receive a fee title because a lifetime lease at that age "is not so hot for me". Also, in applying for fee title he had intended to "purchase and move out 6 small cabins * * *, make two-room apartments and get a few retired oldsters to live there at a low rent". The appellant also asserts that he should receive the level land on the north side of his cabin instead of the rocky hillside on the south side so that he could build those extra cabins and that the lease be extended to "say 40 years, or even 20".

In a letter addressed to the Secretary of the Interior, Dated July 16, 1969, the appellant asserts that the land is not worth $5 per acre.

This Bureau has held that where it has been determined that a parcel of land, for which the appellant is offered a life tenure occupancy lease, is a part of a large block of public domain that is suitable for retention and multiple-use management by the Federal Government, an application for a deed instead of a lease, is properly denied. Lois H. Rountree, Sacramento 079919 (January 29, 1968).

A detailed appraisal report based upon 4 sales of comparable land shows that the fair market value of the subject tract is $60 per acre or $300. This, based upon a 7% return per year makes the rental $4.20 per acre per year or $21 for 5 acres per year. This sum was multiplied by 8.499

years for a value of $178. The appraisal report also shows that the normal life expectancy of the appellant's wife is 12 years. Thus, since the lease payment has been allowed to be spread over a period of 7 years, it appears that the amount of the rental is reasonable, if not nominal. The appellant has submitted no evidence in support of his assertion that the appraised value of the land is excessive. This he is required to do when he disputes the accuracy of the appraisal. Daniel Hicken, A-27877 (March 5, 1959).

Although a copy of the tendered lease is not in the case file, in a similar situation the prospective lessee's attention was invited to the provision in the lease against assignment and sub-leasing by the lessee. Lois H. Rountree, supra. Consequently, no benefit can accrue to the appellant by acquiring the level land located on the north of his cabin.

In offering the appellant a lifetime lease, it is the Bureau's intent to protect only him and his wife during their occupancy of the land as a principal place of residence. To accede to the appellant's request for a 40 or 20-year lease would only facilitate the possible sale or lease of the improvements and occupancy of the tract by another. The appellant is reminded that the Mining Claim Occupancy Act is a relief measure that is designed to preserve homes for qualified occupants from which their forced removal because of the invalidity of the mining claim would be a real hardship. It is not the grant of a right evolving from an unauthorized use of public land.

Accordingly, the decision is affirmed.

William R. McGowan has the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840, see enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant must show wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
William R. McGowan (Certified Mail)
300 (4)
200
Appeals List No. 1

appeal to Sec
dismissed A-31193 10-28-69

Mining Claim Occupancy Act: Qualified Applicant 2215.0-5

An application under the Act of October 23, 1962, is properly rejected where the applicant fails to show that he and his predecessors in interest had maintained residence on his mining claim for not less than seven years prior to July 23, 1962.

Kenneth R. Howard, Sacramento 834 **(August 4, 1969)**

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 AUG 15 AM 10 00

In reply refer to:
141
Sacramento 834

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

August 4, 1969

DECISION

Kenneth R. Howard	:	Mining Claim Occupancy
	:	Application
	:	
	:	

Decision Affirmed

Kenneth R. Howard has appealed from a decision of the Sacramento Land Office, dated April 16, 1969, which rejected his application to purchase certain land located in the Stanislaus National Forest under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. Sec. 701 - 709 (1964). The Land Office concluded that Mr. Howard was not a qualified applicant under the act because he and his predecessors in interest had not maintained residence on his mining claim for at lease seven years immediately prior to July 23, 1962.

In his statement of reasons appellant alleges that during the period of lapse of occupancy from 1955-1959 a Mr. Walter McClean had been prospecting on his claim and that his petition should not be denied because he has complied with all the requirements of the law.

A review of the facts of record confirms the Land Office's determination that the appellant is not a qualified applicant under the Mining Claim Occupancy Act. Section 2 of the act, supra, and the regulations implementing the act (43 CFR 2215.0-5) define a qualified applicant as

> "...a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962."

The Land Office rejection of appellant's application is based upon reports received from the United States Forest Service which disclose that although appellant has occupied the Opal Kenna Marie mining claim since 1959, the claim was not occupied by him or by his predecessors in interest for the full extent of the required seven year period prior to July 23, 1962. The record shows that the claim was conveyed to David Stokesberry and Frank Kuhre in 1940 by L. J. Bradbury. Mr.

Stokesberry died in 1948 or 1949, and Mr. Kuhre died in 1954 or 1955. There is no evidence of any occupancy of the claim from 1955 until 1959 when appellant relocated the claim. The Forest Service reports that upon his relocation of the claim the appellant built his present house and tore down the original cabin, which by then had deteriorated to a tumble-down shack.

Appellant has not submitted any evidence to refute the findings of the Forest Service. Since appellant cannot show the required occupancy for the crucial seven year period, he is not a qualified applicant under the act. Henry P. and Leoda M. Smith, 74 I.D. 378 (1967); Mildred L. Cox, A-30976 (March 14, 1969).

Accordingly, the decision appealed from is affirmed.

Kenneth R. Howard has the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. The appellant must show wherein the decision appealed from is in error.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
Kenneth R. Howard (Certified Mail)
Congressman Harold T. Johnson
300 (6)
200
Appeals List No. 1

Appraisals (Mining Claim Occupancy)

Where the review of an appraisal of land indicates that it does not meet Departmental standards the decision stating the price for the land predicated thereon will be set aside and the case record remanded for reconsideration in the light of the findings determined by that review.

William H. Yarmey, Sacramento 530 (September 4, 1969)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1969 SEP 18 AM 10 00

In reply refer to:
141
Sacramento 530

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

September 4, 1969

CERTIFIED MAIL
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DECISION

William H. Yarmey : Mining Claim Occupancy
:

Decision Set Aside - Case Remanded

By decision of August 8, 1968, the Sacramento land office offered to convey a tract of 4.81 acres described as lots 48, 49 and 50 sec. 31, T. 4 S., R. 19 E., M.D.M., California, to William H. Yarmey, under specified terms and conditions, for the purchase price of $3,600. This price is the fair market value of the land of $5,050, less $1,450, the value of Mr. Yarmey's equities, as determined by the California Region, U. S. Forest Service.

Mr. Yarmey has appealed from the land office decision on the ground that the purchase price is too high, and that his physical disability and other factors were not considered in determining his equities and the net price for this tract. He has also submitted appraisals made by realty operators in the area where the claim is situated to evidence a lower value.

A review of the appraisal has been made and the findings of the Bureau are now part of the record in this case. The appraisal does not meet the standards of this Department, mainly because of weaknesses in the sales analysis. The greatest disparity between the Forest Service appraisal and the value alleged by appellant seems to relate to the question of access.

In view thereof, the land office decision of August 8, 1968, is set aside and the case is remanded to the Sacramento office for reconsideration in the light of the findings made with respect to the appraisal.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

DISTRIBUTION:
Mr. William H. Yarmey
California Region, Forest Service
300
200
Appeals List No. 1

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

1969 SEP 18 AM 10 00

appeal to Sec A-31255 affirmed 4-30-70

INTERIOR
MANAGEMENT
LAND OFFICE
1970 JAN 30 AM 10 00

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

IN REPLY REFER TO:
141
S 895
Mining Claim Occupancy

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JAN 28 1970

DECISION

Lee E. McDonough

Appeal From Decision of
November 3, 1969

Notice of Appeal Filed
November 28, 1969

Appeal Dismissed

For the reason listed below your appeal to the Director, Bureau of Land Management, is hereby summarily dismissed (43 CFR 1840.0-7):

X

☐ No statement of reasons has been filed in support of the appeal, and the time for filing the statement has expired (43 CFR 1842.5-1).

☐ Your statement of reasons for your appeal (or your request for extension of time to file a statement of reasons) was filed in this office, but it was filed late. (43 CFR 1842.5-1) The statement of reasons was transmitted to this office after expiration of the period allowed, and the delay in filing cannot be waived. (43 CFR 1840.0-6(b))

☐ You have not served the adverse party named in the decision appealed from with a copy of ☐ the notice of appeal, and/or ☐ the statement of reasons for the appeal, in the manner prescribed in 43 CFR 1840.0-6(e). (43 CFR 1842.5-2)

☐ Your appeal does not point out wherein the decision appealed from is believed to be in error and consequently you have failed to state reasons for the appeal, as required by the appeals procedures. See Duncan Miller, 65 I.D. 290.

The dismissal of an appeal for failure to comply with the above requirements is mandatory. We have enclosed Circular 2137 which contains the cited regulations.

You are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in enclosed Form 1844-1 and Circular 2137. 1/ If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. In taking an appeal there must be strict compliance with the regulations. If you do not appeal we will close the case and return the record to our State Director for further appropriate action. If an appeal is taken therefrom, a $5 filing fee must be submitted.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2

1/ The adverse party to be served is: None

DEPT OF INTERIOR
BUR OF LAND MGT
SACRAMENTO LAND OFFICE
1969 SEP 18 AM 10 00

INTERIOR
MANAGEMENT
OFFICE

DEPT OF INTERIOR
BUR OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1970 JAN 10 OUT

cc:
Lee E. McDonough (Certified Mail) Original
SD (California)
LO (Sacramento)✓

OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1970 JAN 30 AM 10 00

MCOA

Appeals Procedure: Dismissal 1840.0-7

An appeal that is withdrawn by the appellant will be dismissed.

Doris Lee Reid, Sacramento S-1654 **(November 6, 1969)**

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1969 NOV 18 AM 10 00

In Reply Refer to:
141
Sacramento S-1654

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D.C. 20240

November 6, 1969

DECISION

Doris Lee Reid : Mining Claim Occupancy

Appeal Dismissed

Doris Lee Reid has appealed from a decision of the Sacramento Land Office, dated August 28, 1969, rejecting her application under the Act of October 23, 1962, 76 Stat. 1127, for the reason that she had not constructed valuable improvements on the land within the meaning of section 2 of the Act.

The appellant, by a notice dated October 29, 1969, withdrew her notice of appeal.

Accordingly, the issue in this case is moot, the appeal is dismissed, and the case file is returned to the Bureau's State Director.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

DISTRIBUTION

Mrs. H. S. Gilmore
Doris Lee Reid
300 (6)
200
Appeals List No. 1

Mining Claim Occupancy Act: Qualified Applicants 2215.0-5

When the record on appeal fails to contain sufficient information upon which to make a determination whether the appellants are in fact qualified applicant-owners under the 1962 Act, the rejection of their purchase application will be vacated and the case record remanded for further investigation.

Karl E. and Margaret C. French, Sacramento 1106 **(December 16, 1969)**

INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1970 JAN 12 AM 10 00

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In reply refer to:
141
Sacramento 1106

December 16, 1969

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Karl E. and Margaret C. French : Mining Claim Occupancy

Decision Vacated - Case Remanded

On October 20, 1967, Karl E. and Margaret C. French filed application to purchase a tract of land within Humbug Placer Claims Nos. 1 and 2, located in the S$\frac{1}{2}$ sec. 22, T. 23 S., R. 5 E., Mount Diablo meridian, California, under the Act of October 23, 1962, as amended (76 Stat. 1127; 30 U.S.C. 701-709). With their application they included a relinquishment of the mining claims.

In accordance with a report furnished by the U. S. Forest Service, the Sacramento Land Office by decision of June 3, 1969, rejected the purchase application on the ground that Mr. and Mrs. French are not qualified applicant-owners as of October 23, 1962, because they did not purchase the claims until 1965, and their predecessor in interest had occupied the residence on the claims until that time. The Forest Service report also indicated that the residence was destroyed by fire and was in the process of being rebuilt.

With their appeal from this rejection Mr. and Mrs. French submitted a copy of the bill of sale showing their purchase of the claims on April 14, 1962, from Mr. Fred Vaughn, their predecessor. They also submitted other data which indicates that they were on the claims prior to the date of purchase from Mr. Vaughn, and have furnished a copy of the proof of assessment work on the claims for the year ending September 1, 1962, to show their presence on the claims before October 23, 1962. This evidence tends to disprove contrary statements in the Forest Service report.

The record on appeal does not contain sufficient information upon which to make a proper determination whether in fact Mr. and Mrs. French are occupant-owners as of the critical date of October 23, 1962, and eligible to acquire an interest in a portion of the claims under the terms of the 1962 Act, *supra*. Part of the difficulty stems from the fact that the applicants failed to complete the application form properly, omitting essential information concerning the extent of the residential occupancy, dates of conveyances, recording data, etc. The land office should have required them to provide this information before attempting to adjudicate the case.

Accordingly, the Sacramento Land Office decision of June 3, 1969, is vacated. The case record is remanded to that office, through the State Director, for a further investigation to determine when Mr. and Mrs. French became owners of the claims, when the fire occurred and whether it has any bearing on the time of occupancy of the claims as a residence, and whether the appellants were occupant-owners as a principal place of residence on the critical date. The land office will afford the applicants a reasonable opportunity to supply the requisite information.

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

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Appeals List No. 1

appeal to Sec A-31253 Dismissed 3-13-70

Mining Claim Occupancy Act: Applications 2215.2

Where the applicants admit that the cabin on the claim was unfit for human habitation at the time of their purchase in 1961 and the applicants refuse to submit detailed evidence describing their periods of residence on the claim and the record is otherwise silent as to any residential occupancy of the land from July 1955 to 1961, the application for **relief** is properly rejected.

Raymond C. and Annie F. Hacker, Sacramento 1338 **(January 6, 1970)**

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BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1970 JAN 15 PM 12 30

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

In reply refer to:
141
Sacramento 1338

January 6, 1970

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DECISION

Raymond C. and Annie F. Hacker : Mining Claim Occupancy
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:

Decision Affirmed

Raymond C. and Annie F. Hacker have appealed from a decision of the Sacramento Land Office, dated September 23, 1969, rejecting their application to purchase a portion of the Tip Top lode mining claim, located in the Klamath National Forest, under the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. 701-709 (1964), for the reason that they have not made a satisfactory showing that they and their predecessors in interest had used the claim as a principal place of residence during the required period ending on October 23, 1962.

The appellants admit that when they purchased the claim on July 12, 1961, its physical condition was such that:

> x x x I would not ask my wife to live in a house /that had/ no inside plumbing, only a trickle of water, cracks in the floor and walls, could not keep the outside elements out, including rats and bats.

The appellants also state that the building was not considered by them to be a hunting or fishing cabin or week end retreat because "It is the best part of 400 miles one way" from their home to the claim. They also request that their relinquishment of their mining claim be invalidated because they relied upon the advice of a clerk in the Land Office who said that the relinquishment would "expedite matters". Mr. Hacker asserts that after purchasing the mine in 1961 "all my wages and time has been dedicated to the mine."

The appellants also submitted with their statement of reasons for appeal a year by year statement from 1961 through 1969. The statement for the relevant years 1961 and 1962 is as follows:

1961

12 Trips- With truck and trailor loaded with building material and equipment. Some week end stays

only, to unload and return. Other trips would
be one and two or three weeks.

1962

10 Trips-	Truck and trailor loads, worked on cabin. Hired buldozer to clean brush, and remove garbage dump, fire protection. Stays would be one week to three weeks.

Departmental regulation 43 CFR 2215.0-3(a) states that the Mining Claim Occupancy Act requires the relinquishment of a mining claim believed to be invalid before any affirmative action may be taken on the application. Thus the relinquishment was not a matter of convenience but an essential precondition to the consideration of the application. This is clearly set out in the regulation and, therefore, the applicants were on notice of its provisions. Consequently, the request to withdraw the relinqishment is denied.

The land examination report from the Forest Service states that the subject cabin was in existence prior to July 23, 1955, and on purchasing the claim in November 1961 Mr. Hacker did considerable improvement on the cabin which he completed in 1962. The report also states that Mr. Hacker was personally requested to give approximate dates or months he was on the claim but that "This information he was unable or unwilling to give us for reasons unknown to us. We are unable to obtain any occupancy information from him and x x x we have exhausted all possible means to obtain any occupancy information on Mr. Hacker."

The law has been long established by the United States Supreme Court that no rights in public lands can be granted to anyone in the absence of an act of Congress giving recognition thereto. Sparks v. Pierce, 115 U.S. 408 (1885). Therefore, the appellants' rights, if any, must be considered in light of the provisions of the Mining Claim Occupancy Act, supra.

A recent departmental decision in which the Department interpreted Section 2 of the Mining Claim Occupancy Act, takes note of the two requirements of that section; first, that the applicant and his predecessors must have occupied the improvements on the land for not less than seven years immediately prior to July 23, 1962, and second, that he was a residential occupant-owner as of the date of the enactment of the Act which constitutes for him "a principal place of residence". Henry P. and Leoda M. Smith, 74 I.D. 378 (1967). Therefore, since the appellant admits that the structure on the land was not habitable, and as the record is absolutely silent as to any residential occupancy of the land from July 1955 to July 1961, this Bureau has no legal authority to grant the appellants any relief.

In another case where the applicant refused to submit detailed evidence describing his periods of residence on the claim it was held by the Department that he cannot be qualified as a purchaser under the act of October 13, 1962. See Kenneth E. Bellamy, Sr., A-30588 (October 5, 1966).

In determining the qualifications of an applicant under the act, the determination must be made on the basis of facts that existed on or before October 23, 1962. The occupancy of a mining claim after that date is of no consequence in determining an applicants' qualifications, but it may be an aid in determining prior intent. Ola N. McCulloch Sibley, 73 I.D. 53, 56 (1966). It is for this reason that the improvements for the years 1963 through 1969 cannot be considered in this case.

This decision is without prejudice to the appellants' right to apply directly to the Regional Forester, U.S. Forest Service for a permit.

Accordingly, the decision is affirmed.

Raymond C. and Annie F. Hacker have the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. The appellants must show wherein the decision appealed from is in error.

In the event of an appeal the adverse party to be served is the

Regional Forester
California Region
Forest Service
630 Sansome Street
San Francisco, California 94111

Edward W. Stuebing
Chief, Branch of Land Appeals
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Enclosures 2

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Mining Claim Occupancy Act: Qualified Applicants 2215

Where several members of a family each own an undivided fractional interest in an unpatented mining claim and only one of them, since deceased, could have qualified as an applicant for relief under the Mining Claim Occupancy Act, the surviving owners of the outstanding interests must allege and prove that they have succeeded to the interest, right and privilege of the decedent by devise or descent in order to qualify as applicants for such relief.

Mining Claim Occupancy Act: Relinquishment 2215

Where the owner of a one-seventh interest in unpatented mining claims executes a relinquishment solely in his own name and as his sole act this cannot be imputed to the owners of the remaining interests simply because the person executing the relinquishment holds powers of attorney to act on behalf of the other owners.

Lincoln A. Davidson, et al., Sacramento 743, June 4, 1970

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In reply refer to:
141
Sacramento 743

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

June 4, 1970

DECISION

Lincoln A. Davidson, et al. : Mining Claim Occupancy

Case Remanded

Lincoln A. Davidson, individually and on behalf of his three brothers, Albert, Kenneth, and F. C. Davidson, Jr., and the heirs of his deceased brother, Harvey Davidson, and his two deceased sisters, Nellie Douglas and Fannie L. Cavitt (nee Pennington), applied to purchase the improved portion of the White Prairie mining claim in the NW¼SW¼ sec. 9, T. 14 N., R. 13 E., M.D.M., in the Tahoe National Forest, pursuant to the Mining Claim Occupancy Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. 701-709, as amended.

The application was rejected by the November 18, 1969, decision of the Manager of the Sacramento Land Office for the reason that none of the applicants had occupied the improvements as a principal place of residence as of October 23, 1962, and therefore could not qualify as applicants under the law.

The record shows that in 1935 Frederick C. Davidson, Sr., deeded the White Prairie claim (and other mining claims) to his children, F. C. Davidson, Jr., Harvey Davidson, Albert Davidson, Lincoln Davidson, Kenneth Davidson, Nellie Douglas and Fannie Pennington. There is ample proof that Harvey Davidson did occupy the claim as his principal place of residence and that he would have qualified as an applicant for relief under the statute had he made application prior to his death in May 1963. It is also evident from the record that none of the other claimants did use the White Prairie claim as their principal place of residence during the seven years preceding October 23, 1962, although Lincoln Davidson allegedly initiated his residence there in the spring of 1961 and continued to live on the property to the present time.

Nellie Douglas died in 1951, apparently without children. Fannie L. Pennington Cavitt died in 1963 leaving two surviving children, Chester E. Pennington and Margaret D. Heaps.

Lincoln A. Davidson has been granted power of attorney by his surviving brothers and by Chester Pennington and Margaret D. Heaps to act for them.

As noted above, Frederick C. Davidson, Sr., deeded the claims to his children in 1935.[1] The report by the Forest Service observes that the claims in question were located in 1906 by persons other than Davidson and there is no record of a conveyance by them to Davidson. The report attaches little significance to this because, it is said, the Davidsons "could show ownership by adverse possession" based upon "the many years of uncontested assertion of ownership." Perhaps so, but if the Davidsons relinquish their interest in the claims and the original locators and/or their heirs subsequently assert their interest it will be up to the United States to assert and prove that this interest has been vitiated by the adverse possession of the Davidsons who would no longer have any interest therein by reason of their relinquishment to the United States. In reality, the rights of the original locators can not be extinguished as a matter of record by the execution of a proper relinquishment of all interests held by and through the Davidson family. This is not fatal to the Davidson application however. The point is raised only to show that outstanding claims of ownership remain of record.

In aid of the Davidson application Lincoln A. Davidson executed a relinquishment to the United States of the four mining claims in which the family claimed an interest, same being the Dixie Queen, Gore, Lincoln and White Prairie claims. However, he did this in his own name as his individual act and deed and not on behalf of his principals as their attorney in fact. Ergo, the only interest which has been relinquished is the one-seventh held by Lincoln A. Davidson, and no other.

Chester E. Pennington and Margaret D. Heaps executed an affidavit asserting that they are the children and sole heirs of Fannie L. Cavitt (nee Pennington), and that their aunt and uncle, Nellie C. Douglas and Keith F. Douglas, left no children. While such an affidavit may be accepted at discretion as proof of the facts alleged, for most purposes a self-serving affidavit of heirship would be inadequate, better evidence being available in most instances.

There is nothing to show how the interest of the late Nellie C. Douglas was distributed. The death certificates for her and for her husband are in the record and show that she pre-deceased him. If she died intestate at least a portion of her interest would probably have passed to her husband, Keith Frederick Douglas, under the California law of descent and distribution. If not, a copy of the probated will should be available. If Keith F. Douglas did acquire an interest, that interest may well have

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[1] Frederick C. Davidson was born in England. There is no evidence that he was a citizen of the United States or had declared his intention to become one, a requirement for ownership of a mining claim. 30 U.S.C. 22.

passed to persons outside the Davidson family line upon Douglas' death. It is highly unlikely that the one-seventh interest originally held by Nellie C. Douglas passed intact to the children of her sister as inferred, though not alleged, in their affidavit.

Only Harvey Davidson could have qualified as an owner occupant of the White Prairie mining claim as his principal place of residence during the critical seven-year period prior to the enactment of the statute. The statute provides that rights and privileges to qualify as an applicant may pass through devise or descent, and the Department has recently construed this provision in William and Paul G. Rafferty, A-31085 (March 27, 1970). However, there is absolutely no allegation, suggestion or inference that Harvey Davidson's interest, right and privilege was inherited by his surviving brothers and his deceased sister's children. Since the right to qualify as an applicant was personal to Harvey Davidson, being dependent upon his performance of the requirements, it can only pass to another from him through devise or descent. Therefore, if the appellants here cannot demonstrate that they have succeeded to the qualification of Harvey Davidson, or make an alternative showing that they have fully qualified in their own right, they cannot be regarded as qualified applicants.

The state of the record is such that the case cannot be decided because (1) appellants have not shown a basis for their claim that they are qualified applicants, although they may be so qualified, and (2) the mining claim has not been determined to be invalid nor has it been effectively relinquished to the United States.

Accordingly, the case is remanded to the Sacramento Land Office with instructions to afford the applicants a reasonable but limited period in which to make the required showings and relinquishment, should they elect to do so. However, they must be advised that even by qualifying fully as applicants, there is no assurance that they will be granted the relief which they seek. The granting of relief to qualified applicants is not mandatory, and where the lands for which application has been made are withdrawn for the use of another Federal agency, the Secretary of the Interior is authorized to convey an interest in the land only with the consent of, and under such terms and conditions as may be deemed necessary by the head of the administering agency. 30 U.S.C. 703 (1964). Inasmuch as the land here in question is under the administrative jurisdiction of the Forest Service, it is for that agency to decide what relief, if any, is appropriate in the event that appellants succeed in establishing that they are in fact qualified applicants.

Edward W. Stuebing

Acting Chief, Office of Appeals
and Hearings

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